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Conference Room, Suite 700
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Washington, DC 20002

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Federal Register

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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.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2007–0008]

RIN 3150–AI01

Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: On January 3, 2010, the Nuclear Regulatory Commission (NRC or Commission) published in the **Federal Register** a final rule (75 FR 13) that amends the NRC's regulations in Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 61a to provide alternate fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels. On February 3, 2010, the NRC published in the **Federal Register** a correction to the final rule (75 FR 5495) to correct formatting and typographical errors. This document is necessary to further correct a typographical error that appears in the correction document.

DATES: The correction is effective on November 26, 2010, and is applicable beginning February 3, 2010, the date the original rule became effective.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667, e-mail: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document is the third set of corrections to the final rule published on January 3, 2010. Previous corrections were published on February 3, 2010 (75 FR 5495), and March 8, 2010 (75 FR 10410). This document further corrects a typographical error that appears in the correction document published in the **Federal Register** on February 3, 2010.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 50.61a [Amended]

■ 2. In § 50.61a, amend paragraph (g), Equation 7, by removing the text "A = 1.451×10^{-7} for plates" and adding in its place the text "A = 1.561×10^{-7} for plates".

Dated at Rockville, Maryland, November 19, 2010.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2010–29757 Filed 11–24–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0892; Directorate Identifier 2010–NE–23–AD; Amendment 39–16524; AD 2010–24–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. (P&WC) PW305A and PW305B Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM).

The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles.

We are issuing this AD to prevent failure of the impeller, which could result in an uncontained event and possible damage to the airplane.

DATES: This AD becomes effective January 3, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 3, 2011.

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

FOR FURTHER INFORMATION CONTACT: 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;* phone: (781) 238–7176; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 19, 2010 (75 FR 51187). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM).

The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles.

This Airworthiness Directive (AD) is issued to mandate the incorporation of the revised in-service life limits for the affected impellers, in the AWL section of EMM, as introduced by Temporary Revision (TR) AL–8.

Within 30 days from the effective date of this AD, update AWL section of your PW305 EMM P/N 30B1402, to incorporate TR AL–8 for compliance with the revised in-service limits for the affected Impellers, installed on PW305A and PW305B engine.

Comments

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

Request To Establish an Ending Engine Serial Number Applicability

One commenter, Bombardier—Learjet, asked us to establish an ending engine serial number (S/N) applicability for the proposed AD. The commenter said that any engine from S/N CA0651 forward will be linked to the updated engine maintenance manual (EMM) with the 7,000 cycle exducer life limit. Therefore, engines that have entered or will enter service with the appropriate Airworthiness Limitations already included in their EMM, will not be subject to this unsafe condition. To leave the AD applicability open-ended, will cause hours of unnecessary review and logbook entries for original equipment manufacturers (OEMs) and operators of engines that do not have an unsafe condition.

We don't agree. Because there are no mandatory links between the engine S/N and the EMM, there is no guarantee the EMM will stay with a particular engine S/N. Also, because the proposed AD is a onetime requirement to reduce the life limit for the exducer in the Airworthiness Limitations Section, the proposed AD won't cause hours of unnecessary review and logbook entries for OEMs and operators of engines. We didn't change the proposed AD.

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 114 products of U.S. registry. We also estimate that it will take 0 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $54,288 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $6,188,832. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–24–05 Pratt & Whitney Canada Corp. (Formerly Pratt & Whitney Canada, Inc.): Amendment 39–16524. Docket No.

FAA–2010–0829; Directorate Identifier 2010–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. (P&WC) PW305A and PW305B turboprop engines with certain impellers, part numbers (P/Ns) 30B2185, 30B2486, 30B2858–01, or 30B4565–01 installed. These engines are installed on, but not limited to, Hawker-Beech Corporation BAe.125 series 1000A, 1000B, and Hawker 1000 airplanes and Learjet Inc. Learjet 60 airplanes.

Reason

(d) This AD results from:

As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM).

The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles.

We are issuing this AD to prevent failure of the impeller, which could result in an uncontained event and possible damage to the airplane.

Actions and Compliance

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

(f) Within 30 days from the effective date of this AD, update AWL section of your PW305 EMM P/N 30B1402, to incorporate Pratt & Whitney Canada Corp. Temporary Revision (TR) AL–8, dated January 20, 2010, for compliance with the revised in-service limits for the affected Impellers, installed on PW305A and PW305B engine.

FAA AD Differences

(g) None.

Other FAA AD Provisions

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

Alternative Methods of Compliance (AMOCs)

(i) 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

(j) Refer to MCAI Transport Canada Airworthiness Directive CF–2010–09, dated March 17, 2010, for related information.

(k) 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;* phone: (781) 238–7176; fax: (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) You must use Pratt & Whitney Canada Corp. Temporary Revision No. AL–8, dated January 20, 2010, to P&WC EMM P/N 30B1402 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 Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (800) 268–8000; fax (450) 647–2888; or go to: *http://www.pwc.ca.*

(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 November 10, 2010.

Peter A. White,

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

[FR Doc. 2010–29599 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 090122044–0403–02]

RIN 0648–AX58

Marine Sanitation Device Discharge Regulations for the Florida Keys National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: NOAA is amending the regulations for the Florida Keys National Marine Sanctuary (FKNMS or sanctuary) by eliminating the exemption that allows discharges from within the boundary of the sanctuary of biodegradable effluent incidental to vessel use and generated by marine sanitation devices (MSDs) approved under the Clean Water Act (CWA), and by requiring that MSDs be secured to prevent discharges of treated and untreated sewage. This action builds upon the Environmental Protection Agency's creation of a No Discharge Zone (NDZ) for the state waters of the FKNMS, and will help protect the Florida Keys ecosystem from potentially harmful vessel sewage discharges. An environmental assessment has been prepared for this action pursuant to the National Environmental Policy Act. The environmental assessment includes a Finding of No Significant Impact (FONSI) regarding the impacts of this rulemaking.

DATES: These regulations are effective on December 27, 2010.

ADDRESSES: A copy of the environmental assessment, which includes the FONSI, described in this rule is available upon request to Sean Morton, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040. It is also available for viewing and download at *http://floridakeys.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Sean Morton, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040. Phone: 305–809–4700.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *http://www.gpoaccess.gov/fr/index.html.*

I. Statutory and Regulatory Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

The FKNMS was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101–605) and extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass

communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys.

Other goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection, as well as educating the public about the Florida Keys marine environment. Attracted by this subtropical diversity, tourists spend more than thirteen million visitor days in the Florida Keys each year. In addition, the region's natural and man-made resources provide recreation and livelihoods for approximately 80,000 residents. The region also has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

NOAA issued final regulations and a final management plan in 1997 for the FKNMS (62 FR 32161; June 12, 1997). Those regulations were designed to protect the fragile and nationally significant marine resources of the Florida Keys ecosystem. In doing so, these regulations established a series of fully protected marine zones, managed certain human activities, and established a permitting system for allowing some activities that would otherwise be prohibited. Sanctuary-wide prohibitions include restrictions on discharges into the sanctuary, disturbing the seafloor of the sanctuary, and taking certain marine species.

FKNMS regulations currently include a prohibition on discharging or depositing materials or other matter within the boundary of the sanctuary (15 CFR 922.163(a)(4)). Exceptions include discharging or depositing: (1) Fish, fish parts, chumming materials, or bait during traditional fishing operations in the sanctuary; (2) vessel cooling water or engine exhaust; (3) water generated by routine vessel operations (*e.g.,* deck wash and graywater), excluding oily wastes from bilge pumping; and (4) biodegradable effluent from approved MSDs incidental to vessel use. In certain protected zones, including Ecological Reserves, Sanctuary Preservation Areas and Research-only Areas, only discharges of engine exhaust and cooling water are allowed. The State of Florida, local municipalities (*e.g.,* City of Key West, City of Marathon), U.S. Environmental Protection Agency (EPA), National Park Service and U.S. Coast Guard also regulate MSDs and vessel discharges within the Florida Keys region. In addition, several private, state, local and Federal entities provide or support numerous pump-out stations throughout the Florida Keys to assist vessel operators in complying with these regulations.

Section 312 of the CWA (33 U.S.C. 1322 *et seq.*) gives the EPA and the states the authority to designate NDZs in state waters. An NDZ is an area of a waterbody or an entire waterbody into which the discharge of treated and untreated sewage from all vessels is completely prohibited. NDZs provide an additional management tool to address water quality issues associated with sewage contamination.

II. Historical Context

Several past actions have been taken at both the Federal and state levels to address longstanding water quality concerns in the Florida Keys. Under state law, all counties and municipalities throughout the State of Florida are required to develop and adopt a comprehensive plan that addresses "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area" (Florida Statutes Section 163.3177). In response, the Monroe County Comprehensive Plan includes several objectives geared toward improving and protecting water quality from vessel discharges. In 1999, the Board of County Commissioners of Monroe County adopted a resolution requesting that the Governor of the State of Florida petition the EPA to declare all state waters within the boundaries of the FKNMS to be a NDZ for all vessels. Monroe County believed that this action would be a major step in protecting water quality around the Florida Keys and especially those areas where there is a high concentration of vessels. The Governor of the State of Florida supported Monroe County's decision and in December 2000 submitted the county's request to EPA Region 4, asking EPA to designate all state waters within the boundary of the FKNMS as a NDZ under the authority of section 312(f)(4)(a) of the CWA.

In 2001, the EPA issued a proposed rule to designate the state waters of the FKNMS an NDZ pursuant to section 312(f)(4)(a) of the CWA (66 FR 38967; July 26, 2001). A 90-day public comment period followed (ending October 26, 2001), during which time EPA received 1,050 comments. There was overwhelming support for establishing the NDZ. The EPA's final rule (effective June 19, 2002) prohibits all sewage discharges from vessels in state waters of the FKNMS (67 FR 35735; May 21, 2002).

Both the resolution passed by the Board of County Commissioners of Monroe County and a resolution passed by the FKNMS Water Quality Protection Program Steering Committee on October 27, 1999, requested that NOAA establish regulations for no discharge from MSDs for the entire sanctuary. This was necessary because the EPA's action under the CWA was limited to state waters of the FKNMS. The EPA's final rule also recognized NOAA's intention to expand the prohibition on sewage discharges from vessels into the Federal waters of the sanctuary.

In December 2007, NOAA issued a revised management plan for the FKNMS that included a water quality action plan and regulatory action plan. The revised management plan is the culmination of an extensive public process. The strategies in the water quality action plan address sources of pollution, priority corrective actions and compliance schedules. The strategies seek to maintain and improve the balance between the indigenous population of corals, shellfish, fish and wildlife, and the recreation in and on the water. In particular, water quality Strategy L.1 identified the need to eliminate the discharge of wastewater, whether treated or not, from all vessels into sanctuary waters. The regulatory action plan identified the establishment of sanctuary-wide prohibitions on sewage discharge as a management priority.

On November 16, 2009, NOAA published a proposed rule (74 FR 58923) for this action and requested comments. NOAA's responses to the comments received during the subsequent public comment period are in **Section V** of the preamble in this final rule.

III. Summary of Rulemaking

This rulemaking eliminates the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by MSDs approved under the CWA. It also adds a new requirement that MSDs be secured in a manner that prevents discharges or deposits of treated and untreated sewage while within the boundaries of the FKNMS. Although the FKNMS regulations, as revised by this action, do not specify precisely how vessel operators should secure their MSDs, they state that all methods listed in Coast Guard regulations are among those that are acceptable for this purpose.

The Coast Guard regulations (at 33 CFR 159.7(b)) list the following as acceptable methods of securing Type I or Type II MSDs:

- Closing the seacock and removing the handle;

• Padlocking the seacock in the closed position;
• Using a non-releasable wire-tie to hold the seacock in the closed position; or
• Locking the door to the space enclosing the toilets with a padlock or door handle key lock.

Coast Guard regulations (at 33 CFR 159.7(c)) list the following as acceptable methods of securing Type III MSDs:
• Closing each valve leading to an overboard discharge and removing the handle;
• Padlocking each valve leading to an overboard discharge in the closed position; or
• Using a non-releasable wire-tie to hold each valve leading to an overboard discharge in the closed position.

IV. Justification

A major challenge to scientists and managers working in the Florida Keys and elsewhere is being able to differentiate the natural variability of ecosystems from human-caused disturbances. Signs of ecosystem stress in the Florida Keys include loss of coral cover and diversity, particularly at offshore bank reefs; increasing nitrogen and phosphorus concentrations in the near shore waters; decreased water clarity; and changes in the natural benthic community composition. Comprehensive monitoring of coral reef resources was initiated in 1996 because of the observed but poorly quantified loss of coral cover throughout the Florida Keys, and has documented a 37% reduction in stony coral coverage between 1996 and 2000. Habitat and water quality degradation in canals and other semi-confined waters within the Florida Keys has been measured and is related to human population density.

There are many variables to consider in assessing the impacts of MSD discharges from vessels transiting Florida Keys waters, including the volume of discharge, level of treatment, number of vessels, depth and distance from shore or other sources of pollution, current patterns, and habitat type at the discharge point. The dilution of wastewater from a single vessel transiting the Florida Keys may not cause serious ecological problems and may not be detectable within a short distance from the point of discharge. However, the cumulative impact from many transiting vessels could be significant, particularly where discharges take place in close proximity to coral reef or seagrass habitats (*see* environmental assessment for citations).

Recent data show a continued upward trend in the number of registered vessels in southern Florida, which would suggest an increased potential of transient visits to the Florida Keys and discharges in the FKNMS. Furthermore, there is an area of Federal water south of Key West (called "the hour glass") that effectively concentrates the potential discharge activity of vessel operators. This area and all other areas of the FKNMS are directly upstream of biological resources that are negatively impacted by increased nutrients. In considering the ever-increasing boating population and its discharge potential in south Florida, continuing to allow MSD discharges in the Federal waters of the sanctuary is not compatible with long-term marine ecosystem protection strategies. Also, as a practical matter, allowing vessels to discharge sewage in Federal waters within the FKNMS while prohibiting discharges in state waters could lead to confusion among vessel operators and enforcement problems. Thus, to better protect sanctuary resources, eliminate possible confusion among vessel operators, and facilitate enforcement efforts, FKNMS is eliminating all discharges of treated and untreated sewage from all vessels in the entire sanctuary.

V. Response to Comments

The comments received on the proposed rule that was published on November 16, 2009 (74 FR 58923) are summarized below, together with responses from NOAA. There were 18 distinct submissions from individuals or organizations, an additional 1,396 submissions generated by form letters, and one submission from a Federal agency. The changes to the rule that resulted from the comments received are summarized in the next section of this preamble **(VI. Summary of Changes From the Proposed Rule)**.

Public Submissions

1. *Comment:* The proposed rule should be implemented for several reasons, including: to mitigate one of multiple stressors on coral reefs; pollution is harmful and not solved by dilution; and MSDs do not remove all viruses and excess nutrients that can be harmful. NOAA should expeditiously adopt and actively enforce the proposed rule.

Response: NOAA agrees there are multiple stressors on the ecosystems in the Florida Keys, one of which could be mitigated by prohibiting the discharge of treated and untreated sewage into FKNMS waters. Though Type I and Type II MSDs can reduce the viral and nutrient content of sewage, NOAA believes pumping out at approved facilities, rather than discharging into the sanctuary, is less harmful to the habitats and species in the FKNMS.

2. *Comment:* Expanding the existing NDZ from state to Federal waters is appropriate and is consistent with the Florida Coastal Management Program.

Response: NDZs only apply in state waters per the Clean Water Act. However, NOAA believes having similar MSD discharge regulations apply throughout all FKNMS waters (*i.e.*, both state and Federal) will improve enforceability of such regulations. Further, this should reduce confusion among FKNMS visitors/users, build on the strong partnership between NOAA and the State of Florida in managing the FKNMS and, overall, enhance the protections afforded to FKNMS resources.

3. *Comment:* NOAA should support the installation of land- and vessel-based pump-out facilities, and continue to educate the public about the availability and importance of using these facilities.

Response: NOAA agrees installation of land- and vessel-based pump-out facilities and education are important components of increasing compliance with the proposed rule. To this end, NOAA will work with the appropriate state and Federal entities to support installation of adequate pump-out facilities. In addition, NOAA will provide information to the public about these facilities. These measures should help encourage vessel operators to reduce pollution to the FKNMS from vessels' sewage discharges.

4. *Comment:* The proposed rule should be implemented, but NOAA should also consider banning harmful vessel graywater discharges, especially from large cruise and cargo vessels.

Response: NOAA agrees graywater discharges may be harmful to the ecosystem, particularly in large volumes in sensitive habitats. However, this rulemaking implements a recommendation from the 2007 Florida Keys National Marine Sanctuary Revised Management Plan that was specific to discharges of sewage from vessels. Additional water quality regulation may be considered in future FKNMS management plan reviews.

5. *Comment:* The proposed rule should be implemented, but enforceability of tracking discharges from and locking of MSDs raises concerns. NOAA should include an enforcement component in the final rule that considers such issues as regular patrols in the FKNMS, proactive boarding/inspection of vessels, standards for acceptable types of MSD locks, and consequences of noncompliance.

Response: NOAA agrees adequate enforcement will be necessary to help make the rule more effective, especially given the size of the FKNMS and the number of vessels that use the FKNMS. Therefore, NOAA has included language related to enforcement in the preamble to the final rule to facilitate understanding of the requirements of this rule, enhance enforceability, and encourage compliance. Specifically, NOAA has included acceptable methods, as described in 33 CFR 159.7(b) and (c), for securing MSDs in a manner that prevents discharges or deposits of treated and untreated sewage into FKNMS waters. In addition, language has been included in the environmental assessment associated with this rule (*see* **ADDRESSES** section for instructions on obtaining a copy) to specify that personnel from the Florida Fish and Wildlife Conservation Commission, the NOAA Office for Law Enforcement, and the U.S. Coast Guard are authorized to enforce this rule. Noncompliance would be subject to civil penalties pursuant to section 307 of the National Marine Sanctuaries Act (16 U.S.C. 1437).

6. *Comment:* The proposed rule should be implemented, especially because it is consistent with the efforts (*i.e.,* money being spent) by Monroe County to treat wastewater from land-based sources. In addition, no discharges should be allowed from any sources.

Response: NOAA agrees that this action will complement other efforts by Monroe County and the State of Florida to reduce harmful discharges into the FKNMS and surrounding waters. This rulemaking builds consistency and enhances partnerships to improve water quality. Further, this rulemaking implements a recommendation from the 2007 Florida Keys National Marine Sanctuary Revised Management Plan that was specific to discharges of sewage from vessels. Though the prohibition of discharges from sources other than MSDs is beyond the intent of this rule, additional water quality regulation may be considered in future FKNMS management plan reviews.

7. *Comment:* The proposed rule should not be implemented because it is ill advised, counter-productive and impractical to enforce. Instead, NOAA should actively encourage the installation and use of approved Type I MSDs, since they properly treat waste to make discharges harmless.

Response: NOAA does not agree installation of Type I MSDs should be encouraged over prohibiting discharges from MSDs in FKNMS waters, since they do not adequately remove the viruses and excess nutrients that could harm FKNMS resources. Allowing any discharges of sewage, treated and untreated, is not as protective of FKNMS water quality as completely prohibiting them. Further, this rule is consistent with the existing discharge prohibitions in Florida's state waters, and therefore enhances compliance and increases enforceability in both state and Federal waters.

8. *Comment:* NOAA should have consistent, system-wide (rather than site-specific) procedures for designating NDZs in national marine sanctuaries. NOAA should adopt those procedures already established by the CWA by which states obtain permission from the EPA to designate state waters as NDZs.

Response: The EPA's procedures for establishing NDZs are not appropriate for every national marine sanctuary in the National Marine Sanctuary System (system), since NDZs only apply in state waters per the CWA, and some sanctuaries are located entirely in Federal waters. This rule encompasses all waters of the FKNMS, which includes state and Federal waters. Each site in the system was designated with different goals and objectives and, thus, their needs for vessel discharge regulations vary as well. NOAA will continue to evaluate the need for restrictions on vessel discharges on a sanctuary-by-sanctuary basis.

9. *Comment:* NOAA has not demonstrated whether it considered if adequate pump-out facilities are available to vessel operators nor where funding will come from and be directed for increased access to pump-out facilities. NOAA cannot rely on the demonstration made by the State of Florida to the EPA unless the state had also considered the impact of an NDZ in the Federal waters of the FKNMS. NOAA should work with state and local agencies, EPA, and the U.S. Fish and Wildlife Service (FWS) to ensure that there are adequate pump-out facilities available.

Response: NOAA included information in the draft environmental assessment associated with this rule on the pump-out facilities in the Florida Keys and provided additional details about their locations and operational status in this rule's final environmental assessment (*see* **ADDRESSES** section for instructions on obtaining a copy). NOAA believes that vessel operators will be able to adequately discharge MSDs at existing pump-out facilities in the Florida Keys, based on their current quantity and locations, or outside FKNMS boundaries as appropriate. Florida was awarded $2.5 million in grant funding from the Clean Vessel Act Grant Program in 2008 (with $838,976 in matching funding provided by the state), and this money is being used through 2010 to fund up to 121 pump-out projects in the coastal regions of Florida, which should increase access to pump-out facilities for vessel operators. To date, nine of these additional pump-out projects are in Monroe County. These efforts and the NOAA MSD discharge regulation help implement Strategy L.1, Elimination of Wastewater Discharge from Vessels, Activities 2–5, in the 2007 Florida Keys National Marine Sanctuary Revised Management Plan.

Federal Submissions—U.S. Coast Guard

10. *Comment:* The term "unlocked" is unclear and not otherwise defined, so NOAA should cross-reference Coast Guard regulations on MSDs in the rule to promote consistency and clarify regulatory compliance.

Response: NOAA has edited the rule language that was proposed for 15 CFR 922.163(a)(5)(vi) to replace "unlocked or that allows discharge or deposit of sewage" with "not secured in a manner that prevents discharges or deposits of treated and untreated sewage." NOAA agrees that acceptable methods for securing MSDs to prevent discharges or deposits of treated and untreated sewage include, but are not limited to, the methods listed in the Coast Guard's regulations (at 33 CFR 159.7(b) and (c)). Though NOAA has included the reference to Coast Guard's regulations in this rule as a guide, vessel operators could use other methods if those methods fulfill NOAA's goal of ensuring that sewage from MSDs is not discharged into the sanctuary.

11. *Comment:* Vessels with Type I and II MSD technologies that require considerable effort to start and stop (certain biological or anaerobic type systems) might also be equipped with a Type III MSD, which can hold treated sewage while operating in an area where discharge is prohibited.

Response: Comment noted.

12. *Comment:* Federal, State and local law enforcement officers should retain an exemption allowing them to discharge biodegradable effluent incidental to vessel use and generated by MSDs into FKNMS waters, as eliminating the exemption would have a negative impact on law enforcement activities. Since activities in the FKNMS related to migrant interdiction operations, counter-drug smuggling operations, and search and rescue operations may be long and drawn out, requiring the law enforcement vessel to operate near the incident, leaving the

scene of the incident to discharge an MSD is not always an option.

Response: NOAA agrees Federal, State and local law enforcement officers acting in their official capacities may not have an option to leave the scene of an incident to discharge an MSD. NOAA has amended the regulatory language in 15 CFR 922.163(e) to ensure that the requirements and prohibitions of this rule do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.

VI. Summary of Changes From the Proposed Rule

Due to the comments received and the need for some technical fixes, NOAA has made a few key changes to this final rule as compared to the proposed rule as follows:

- Provided in the preamble some examples from Coast Guard regulations of acceptable methods for securing MSDs in a manner that prevents discharges and deposits of treated and untreated sewage;
- Made a conforming amendment to 15 CFR 922.163(a)(4)(ii);
- Clarified the language in new paragraph 15 CFR 922.163(a)(5)(vi) and added a reference to Coast Guard regulations; and
- Added into 15 CFR 922.163(e) an exemption from this rulemaking for law enforcement officers performing their duties.

VII. Classifications

A. National Environmental Policy Act

NOAA has prepared an environmental assessment, which includes a Finding of No Significant Impact (FONSI), regarding the impacts of this rulemaking. The assessment found that this action would eliminate at least one contributing factor to declining water quality within the FKNMS. Improved water quality is necessary for the maintenance and enhancement of the sanctuary's biological resources, as well as of the recreational and commercial opportunities they provide. If the no action alternative had been adopted, it would have continued the discharge of treated sewage from MSDs into the Federal waters of the FKNMS, which would have continued to contribute to the decline of water quality. Poor water quality threatens not only the unique biological resources of the FKNMS, but also the viability of the local economy, which depends on the ability of these resources to attract visitors. Copies of the environmental assessment, which includes the FONSI, are available at the address and website listed in the **ADDRESSES** section of this rule.

B. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The State of Florida was consulted during the promulgation of this rule.

D. Paperwork Reduction Act

This rule does not contain any new collection-of-information requirements or revisions to the existing collection-of-information requirement that was approved by the Office of Management and Budget (OMB) (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.* Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas, Sanctuary preservation areas, Ecological reserves, Areas to be avoided, State of Florida, U.S. Coast Guard, Federal Water Pollution Control Act (Clean Water Act).

Dated: November 17, 2010.

Juliana P. Blackwell,

Acting Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

■ Accordingly, for the reasons discussed in the preamble, amend title 15, part 922 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.163 as follows:
■ a. By removing paragraph (a)(4)(i)(B);
■ b. By redesignating paragraphs (a)(4)(i)(C) and (a)(4)(i)(D) as (a)(4)(i)(B) and (a)(4)(i)(C), respectively;
■ c. By revising (a)(4)(ii); and
■ d. By adding a new paragraph (a)(5)(vi);
■ e. By revising paragraph (e) to read as follows:

The revisions and addition read as follows:

§ 922.163 Prohibited activities—Sanctuary wide.

(a) * * *

(4) * * *

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except:

(A) Those listed in paragraph (a)(4)(i)(A) through (a)(4)(i)(C) of this section;

(B) Sewage incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1322 *et seq.;*

(C) Those authorized under Monroe County land use permits; or

(D) Those authorized under State permits.

(5) * * *

(vi) Having a marine sanitation device that is not secured in a manner that prevents discharges or deposits of treated and untreated sewage. Acceptable methods include, but are not limited to, all methods that have been approved by the U.S. Coast Guard (at 33 CFR 159.7(b) and (c)).

* * * * *

(e) The following prohibitions do not apply to Federal, State and local officers while performing enforcement duties in their official capacities or responding to emergencies that threaten life, property, or the environment:

(1) Those contained in paragraph (a)(4) of this section only as it pertains to discharges of sewage incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1322 *et seq.;* and

(2) Those contained in paragraph (a)(5) of this section.

* * * * *

[FR Doc. 2010–29416 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–NK–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

[Release Nos. 33–9158; 34–63348; 39–2472; File No. S7–02–09]

RIN 3235–AK26

Extension of Temporary Exemptions for Eligible Credit Default Swaps To Facilitate Operation of Central Counterparties To Clear and Settle Credit Default Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Final temporary rules; extension.

SUMMARY: We are extending the expiration dates in our temporary rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps in order to continue facilitating the operation of one or more central counterparties for those credit default swaps until the implementation of the clearing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the amendments, the expiration dates of the temporary rules are extended to July 16, 2011.

DATES: *Effective Date:* This rule is effective November 26, 2010, and the expiration dates for the temporary rules and amendments published January 22, 2009 (74 FR 3967) and extended in a release published on September 17, 2009 (74 FR 47719) are extended from November 30, 2010 to July 16, 2011.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel, or Michael J. Reedich, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 551–3500, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: temporary Rule 239T and Rule 146 under the Securities Act of 1933 ("Securities Act"),[1] temporary Rule 12a–10T and Rule 12h–1(h)T under the Securities Exchange Act of 1934 ("Exchange Act"),[2] and temporary Rule 4d-11T under the Trust Indenture Act of 1939 ("TIA").[3]

I. Background

In January 2009, we adopted interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act, interim final temporary Rules 12a–10T and 12h–1(h)T under the Exchange Act, and interim final temporary Rule 4d–11T under the TIA (collectively, the "Temporary Rules"), and in September 2009, we extended the expiration date of these rules from September 25, 2009 to November 30, 2010. We adopted these rules in connection with temporary exemptive orders[4] we issued to clearing agencies acting as central counterparties ("CCP"), which exempted the CCPs from the requirement to register as clearing agencies under Section 17A of the Exchange Act[5] solely to perform the functions of a clearing agency for certain credit default swap ("CDS") transactions.[6] The exemptive orders also exempted certain eligible contract participants[7] and others from certain Exchange Act requirements with respect to certain CDS.[8] Also at that time, we temporarily exempted any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act[9] to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

We adopted the Temporary Rules and the CCP exemptive orders because we believed and continue to believe that the existence of CCPs for CDS would be important in helping to reduce counterparty risks inherent in the CDS market. Today, CDS agreements generally are negotiated and entered into bilaterally, but eligible trades may be submitted to the CCP for novation, which results in the CCP becoming the buyer to the original seller and the seller to the original buyer.[10] The operation of a well-regulated CCP can significantly reduce counterparty risks by preventing the failure of a single-market participant from having a disproportionate effect on the overall market, since bilateral counterparty risk is eliminated as the creditworthiness of the original counterparties is replaced by the creditworthiness of the CCP.

At the time of the adoption of the Temporary Rules and the CCP exemptive orders, the OTC market for CDS was a source of concern to us and other financial regulators due to the systemic risk posed by CDS, the possible inability of parties to meet their obligations as counterparties under the CDS, and the potential resulting adverse effects on other markets and the financial system.[11] In response, in January 2009, we took action to help foster the prompt development of CCPs for CDS, including granting conditional exemptions from certain provisions of the Federal securities laws.

In September 2009, we extended the expiration date of the Temporary Rules to November 30, 2010 because, among other reasons, a number of legislative initiatives relating to the regulation of derivatives, including CDS, had been introduced by members of Congress and recommended by the United States Department of the Treasury ("Treasury"), and Congress had not yet

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

[4] *See generally* Securities Exchange Act Release Nos. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) and 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release Nos. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) and 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release Nos. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), and 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release Nos. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), and 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

[5] 15 U.S.C. 78q–1.

[6] *See* Exchange Act Release No. 59246 (Jan. 14, 2009).

[7] *See* 7 U.S.C. 1a(12).

[8] *See generally* the actions noted in footnote 4, *supra.*

[9] 15 U.S.C. 78e and 78f.

[10] "Novation" is a "process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts." Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, *Recommendations for Central Counterparties* (November 2004) at 66.

[11] In addition to the potential systemic risks that CDS pose to financial stability, we were concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

taken definitive action with respect to any of the legislative initiatives or the Treasury proposals.[12]

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") became law.[13] The Dodd-Frank Act is intended to address regulatory gaps in the existing regulatory structure for the over-the-counter ("OTC") derivatives markets by providing the Commission and the Commodity Futures Trading Commission ("CFTC") the authority to regulate OTC derivatives. The primary goals of Title VII of the Dodd-Frank Act, among others, are to increase the transparency, efficiency and fairness of the OTC derivatives markets, improve investor protection and to reduce the potential for counterparty and systemic risk.[14] To this end, Title VII of the Dodd-Frank Act imposes a comprehensive regime for the regulation of "swaps" and "security-based swaps" (as those terms are defined in the Dodd-Frank Act), including the clearing, exchange trading, and reporting of transactions in security-based swaps.[15] Certain CDS are security-based swaps as defined under the Dodd-Frank Act.

The Dodd-Frank Act amends the Exchange Act to require, among other things, that transactions in security-based swaps be cleared through a clearing agency that is registered with the Commission or that is exempt from registration if the transactions are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies.[16] Title VII of the Dodd-Frank Act also provides that a derivatives clearing organization that is registered with the CFTC and cleared swaps pursuant to an exemption from registration as a clearing agency prior the date of enactment of the Dodd-Frank Act, is deemed registered as a clearing agency for the purposes of clearing security-based swaps ("Deemed Registered Provision").[17] The Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, become effective on July 16, 2011.[18]

The Dodd-Frank Act also directs us to adopt regulations regarding, among other things, clearing agencies for, and the clearing of, security-based swaps, which include CDS. Under the Dodd-Frank Act, all security-based swaps, including certain types of CDS, are defined as securities under the Securities Act and the Exchange Act. In separate rulemakings, we will be proposing rules to implement the clearing provisions of the Dodd-Frank Act, among others.[19] As part of our review of the application of the Securities Act, the Exchange Act and the TIA to security-based swaps and the implications for the clearing and exchange trading provisions of the Dodd-Frank Act and our rules implementing them, we will be evaluating the necessity and appropriateness of exemptions from the registration requirements of the Securities Act and Exchange Act and the indenture qualification provisions of the TIA for security-based swaps that will be cleared by clearing agencies. Pending the effective date of the relevant provisions of the Dodd-Frank Act, however, the Temporary Rules are needed to enable the CCPs to continue to clear eligible CDS in accordance with the exemptive orders we have provided. The Temporary Rules are an interim measure that will be supplanted by the comprehensive regulatory regime required by the Dodd-Frank Act.

At the time of adoption of the Temporary Rules in January 2009, we requested comment on various aspects of the Temporary Rules. We received a total of 15 letters, only two of which commented specifically on the Temporary Rules.[20] Although those two letters generally supported allowing CCPs to clear and settle CDS transactions in accordance with the terms of the Temporary Rules, neither of the commenters specifically addressed the duration of the Temporary Rules and temporary amendments.[21] The other commenters raised issues not directly related to this rulemaking. No comments have been submitted to us regarding the Temporary Rules since that time.

The Temporary Rules expire on November 30, 2010. As we discuss above, until the effective date of the clearing provisions of Title VII of the Dodd-Frank Act and our rules implementing them, it is important that the CCPs continue to be able to clear eligible CDS without concern that the Temporary Rules are unavailable. As a result, we have determined that it is necessary and appropriate to extend the expiration date to July 16, 2011.[22]

We are only extending the expiration date of the Temporary Rules; we are not making any other changes to the Temporary Rules. The Temporary Rules were modeled on other exemptions we have provided in the past to facilitate trading in certain securities.[23] They are limited in scope; in general, they facilitate the operation of the CCPs under the exemptive orders.[24]

II. Amendment of Expiration Date of the Temporary Rules

In January 2009, we adopted the Temporary Rules on a temporary basis until September 25, 2009. We subsequently extended the expiration

[12] *See, e.g.,* Derivatives Trading Integrity Act of 2009 (S. 272) (introduced by Senator Tom Harkin in January 2009); The Derivatives Markets Transparency and Accountability Act (H.R. 977) (introduced by Representative Collin Peterson in February 2009); Authorizing the Regulation of Swaps Act (S. 961) (introduced by Senator Carl Levin and Senator Susan Collins in May 2009); Treasury's framework for regulatory reform (released in June 2009); Derivative Trading Accountability and Disclosure Act (H.R. 3300) (introduced by Representative Michael McMahon in July 2009); Description of Principles for OTC Derivatives Legislation (announced by Representative Barney Frank and Representative Collin Peterson in July 2009); Senator Charles Schumer's announcement regarding a potential bill establishing central trade repositories for OTC derivatives markets (August 2009); and Over-the-Counter Derivatives Markets Act of 2009 (prepared by Treasury and sent to Congress in August 2009).

[13] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, H.R. 4173).

[14] *See e.g., S. Rep. No. 111–176 at 2 (2010).*

[15] Section 761(a)(6) of the Dodd-Frank Act defines a "security-based swap" as any agreement, contract, or transaction that is a swap based on a narrow-based security index, a single security or loan, including any interest therein or on the value thereof; or the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

[16] *See* Section 763(a) of the Dodd-Frank Act, added as Section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78a.

[17] *See* Section 763(b) of the Dodd-Frank Act, added as Section 17A(l) of the Exchange Act, 15 U.S.C. 78q–1.

[18] Section 774 of the Dodd-Frank Act states, "[u]nless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

[19] Under the Dodd-Frank Act, we are responsible for proposing and adopting numerous rulemakings relating to Title VII and many other rules implementing other provisions of such Act.

[20] The public comments we received are available for Web site viewing and printing at the Commission's Public Reference Room at 100 F St., NE., Washington, DC 20549 in File No. S7–02–09. They are also available online at *http://www.sec.gov/comments/s7–02–09/s70209.shtml.*

[21] *See* letters from the Yale Law School Capital Markets and Financial Instruments Clinic (March 23, 2009) and from IDX Capital (March 23, 2009).

[22] *See* Section III, *infra,* for a discussion of why the extension of time is necessary.

[23] *See, e.g.,* Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78*l*(a)], and Exchange Act Rule 12h–1(d) and (e) [17 CFR 240.12h–1(d) and (e)] (providing similar exemptions from provisions of the Federal securities laws for standardized options and securities futures products).

[24] For a fuller discussion of the exemptive rules, see Exchange Act Release 59246 (Jan. 14, 2009).

date to November 30, 2010 to allow CCPs that were clearing and settling CDS transactions in the U.S. and in Europe to continue to clear and settle CDS transactions. The Temporary Rules also enable other CCPs that obtain exemptive orders to start clearing and settling CDS transactions in the manner contemplated by the exemptive orders.

Since the adoption of the Temporary Rules and issuance of the exemptive orders, ICE Trust U.S. LLC ("ICE Trust"), and ICE Clear Europe, Ltd. ("ICE Clear Europe") have been actively engaged as CCPs in clearing CDS transactions in reliance on our exemptions. As of October 25, 2010, ICE Trust has cleared 157,691 CDS transactions with a notional value of $7.8 trillion. As of October 25, 2010, ICE Clear Europe has cleared 175,102 CDS transactions with a notional value of €3.8 trillion. We believe that the clearing of CDS transactions by ICE Trust and ICE Clear Europe has contributed and we anticipate will continue to contribute to increased transparency and the reduction of systemic risk in the CDS market.

We also granted exemptive orders to three other CCPs to clear CDS that have functioned as CCPs in clearing CDS transactions in accordance with our exemptions.[25] Two of these CCPs, The Chicago Mercantile Exchange and Eurex Clearing AG have advised our staff that they intend to continue to work with participants in the CDS market to promote their CCP services.

The extension of the Temporary Rules and the exemptive orders will terminate at the time that the clearing provisions and rules implementing of Title VII of the Dodd-Frank Act become effective. The extension of such Temporary Rules is designed to the foster continued development and operation of CCPs for eligible CDS, which we believe is in the public interest. Once the Dodd-Frank Act provisions become effective, a new permanent and comprehensive regulatory regime for all security-based swaps will be implemented and the Temporary Rules affecting solely eligible CDS will no longer be necessary or appropriate. Therefore, due to the limited time the Temporary Rules will be needed, and our ongoing efforts to implement the provisions of the Dodd-Frank Act, we are extending the Temporary Rules until July 16, 2011.

III. Certain Administrative Law Matters

Section 553(b) of the Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." For the reasons we discuss throughout this release, we believe that there is good cause to extend these rules until July 16, 2011 without further notice or opportunity for comment.

We sought comment on the Temporary Rules and as noted above, we received little comment when they were originally promulgated. In addition to the specific comments that we sought and received in connection with the Temporary Rules in January 2009, we have sought public input on implementing the provisions of the Dodd-Frank Act, which requires extensive public notice and comment rulemaking that will supplant and subsume the exemptive rules we have crafted as a temporary measure.[26] Further, we will seek public comment in connection with the proposed rulemaking to implement the specific provisions of the Dodd-Frank Act relating to the treatment of security-based swaps under the Securities Act and the Exchange Act. Commenters will have full opportunity to provide their views on this new comprehensive regulatory regime.

Absent the extension of the Temporary Rules, such Temporary Rules would expire at the end of November 2010, prior to the effective date of the provisions of Title VII of the Dodd-Frank Act. The rules have been in place since January 2009, and CCPs have relied on them in clearing eligible CDS. Extending the expiration date of the Temporary Rules would not affect the substantive provisions of those rules. Without further extending the expiration date of the Temporary Rules to the time of effectiveness of the provisions of Title VII of the Dodd-Frank Act, CCPs would not be able to continue to clear eligible CDS in accordance with the exemptive orders they have received from us. Extending the expiration date of the Temporary Rules will allow exempt CCPs to continue to clear eligible CDS until the provisions of the Dodd-Frank Act, including the rules promulgated under such Act, become effective. This will occur by the July 2011 expiration of the Temporary Rules. Therefore, we believe there is good cause to extend the Temporary Rules until July 16, 2011 and find that notice and solicitation of comment on the extension to be impracticable, unnecessary, or contrary to the public interest.[27]

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[28] However, this requirement does not apply if the agency finds good cause not to delay the effective date.[29] For reasons similar to those explained above, the Commission finds good cause not to delay the effective date.

IV. Paperwork Reduction Act

The Temporary Rules do not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[30] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we did not submit the Temporary Rules to the Office of Management and Budget for review in accordance with the PRA when we adopted them in January 2009.[31] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment. The extension of the expiration dates does not change our analysis.

V. Cost-Benefit Analysis

In January 2009, we adopted the Temporary Rules, which exempt eligible CDS that are or will be issued or cleared by a CCP and offered and sold only to eligible contract participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the

[25] *See* Exchange Act Release Nos. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) and 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) (temporary exemptions for Eurex Clearing AG); Exchange Act Release Nos. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), and 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions for Chicago Mercantile Exchange Inc.); and Exchange Act Release No. 59164 (Dec. 24, 2008) 74 FR 139 (Jan. 2, 2009) (temporary exemption for LIFFE A&M and LCH.Clearnet Ltd.). LIFFE A&M and LCH.Clearnet Ltd, allowed their temporary exemption to expire.

[26] *See* Public Comments on SEC Regulatory Initiatives Under the Dodd-Frank Act, located at *http://www.sec.gov/spotlight/regreformcomments.shtml*. None of these comments addressed the Temporary Rules.

[27] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule shall take effect at such time as the Federal agency promulgating the rule determines.").

[28] 5 U.S.C. 553(d).

[29] 5 U.S.C. 553(d)(3).

[30] 44 U.S.C. 3501 *et seq.*

[31] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

registration requirements under Section 12 of the Exchange Act and from the provisions of the TIA. In September 2009, we adopted amendments to such rules to extend their expiration date to November 30, 2010. The Temporary Rules were intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market. Today, we are adopting amendments to such rules to extend their expiration date to July 16, 2011.

Since the adoption of the Temporary Rules and issuance of the exemptive orders, ICE Trust and ICE Clear Europe have been actively engaged as a CCP in clearing CDS transactions in accordance with our exemptions.

On July 21, 2010, the Dodd-Frank Act was enacted. Among other things, the Dodd-Frank Act amends the Exchange Act to require that transactions in security-based swaps be cleared through a clearing agency that is either registered with the Commission or exempt from registration if the transactions are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies. As noted above, the Dodd-Frank Act directs us to regulate, among other things, clearing agencies for, and the clearing of, security-based swaps, which include certain CDS, and in separate rulemakings we will be proposing rules to implement the clearing provisions of the Dodd-Frank Act, among others. Extending the expiration dates of the Temporary Rules until July 16, 2011 will allow us to propose those rules, which will be subject to notice and comment. Pending the effective date of the clearing provisions of the Dodd-Frank Act, however, the Temporary Rules are needed to enable the CCPs to continue to clear eligible CDS in accordance with the exemptive orders we have provided.

A. Benefits

The Temporary Rules and the CCP exemptive orders facilitate the operation of CCPs in the CDS market. We believe that extending the Temporary Rules and the CCP exemptive orders will continue to facilitate the operation of CCPs [32] and the use by eligible contract participants of CDS CCPs while enabling us to provide some oversight of the non-excluded CDS market.[33] We believe that the operation of two CCPs in accordance with our exemptions has increased transparency,[34] increased available information about exposures to particular reference entities or reference securities,[35] and reduced risks to participants in the market for CCP-cleared CDS.[36] Not extending the termination date could cause significant disruptions in this market. Therefore, we believe that extending the termination date of the Temporary Rules provides important benefits to CDS market participants.

B. Costs

Absent the exemptions provided by the Temporary Rules, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the TIA, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with the disclosures and other protections of these requirements, including civil remedies in addition to antifraud remedies.

We recognize that a consequence of extending the exemptions will be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the TIA. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),[37] it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[38] We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.[39] We believe that the incremental costs from the extension of the expiration date of the Temporary Rules will be minimal because the amendments are merely an extension of such Temporary Rules and such extension will not affect the information and remedies available to investors as a result of the Temporary Rules.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [40] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) [41] of the Securities Act and Section 3(f) [42] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

The Temporary Rules we are extending today exempt eligible CDS issued or cleared by a CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the TIA. Because these exemptions are available to any CCP offering and selling eligible CDS, we do not believe that extending the exemptions imposes a burden on competition. We also anticipate that extending the ability to settle CDS through CCPs will continue to improve the transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. ICE Trust, for example, makes available on its Web site information about open interests, or net exposure, volume and pricing of CDS transactions. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that extending Temporary Rules will not have a significant economic impact on a substantial number of small entities. The Temporary Rules exempt eligible CDS that are or will be issued or cleared by a CCP. None of the entities that are eligible to meet the requirements of the

[32] *See* Karen Brettell, *Banks to submit 95 pct of eligible CDS for clearing* (Sep. 1, 2009), *available at http://www.reuters.com/article/euRegulatoryNews/idUSN0150814420090901?pageNumber=1&virtualBrandChannel=10522.*

[33] *See e.g.,* Exchange Act Release No. 59527, *supra* Note 10 (our exemptions require that the CCPs provide us with, among other things, access to conduct on-site inspections of facilities, records and personnel).

[34] *See* Testimony of Mark Lenczowski, *supra* Note 12.

[35] *See e.g.,* Exchange Act Release No. 59527, *supra* Note 26.

[36] *See* IntercontinentalExchange, *supra* Note 13.

[37] 15 U.S.C. 78j(b).

[38] 15 U.S.C. 77k and 77*l*.

[39] *See* 15 U.S.C. 77q and 15 U.S.C. 78j(b).

[40] 15 U.S.C. 78w(a)(2).

[41] 15 U.S.C. 77b(b).

[42] 15 U.S.C. 78c(f).

exemption from registration under Section 17A is a small entity.

VIII. Statutory Authority and Text of the Rules and Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the TIA.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

■ Accordingly, we are temporarily amending 17 CFR parts 230, 240, and 260 as follows and the expiration date for the temporary rules published January 22, 2009 (74 FR 3967), and extended to November 30, 2010, is further extended from November 30, 2010, to July 16, 2011.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

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§§ 230.146 and 230.239T [Amended]

■ 2. In § 230.146(c)T, in the last sentence, remove the words "November 30, 2010" and add, in their place, the words "July 16, 2011".

■ 3. In § 230.239T(e), remove the words "November 30, 2010" and add, in their place, the words "July 16, 2011".

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

§§ 240.12a–10T and 240.12h–1 [Amended]

■ 5. In § 240.12a–10T(b), remove the words "November 30, 2010" and add, in their place, the words "July 16, 2011".

■ 6. In § 240.12h–1(h)T, in the last sentence, remove the words "November 30, 2010" and add, in their place, the words "July 16, 2011".

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 7. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

§ 260.4d–11T [Amended]

■ 8. In § 260.4d–11T, in the last sentence, remove the words "November 30, 2010" and add, in their place, the words "July 16, 2011".

Dated: November 19, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–29702 Filed 11–24–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–25–000; Order No. 742]

System Personnel Training Reliability Standards

Issued November 18, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Commission approves two Personnel Performance, Training and Qualifications (PER) Reliability Standards, PER–004–2 (Reliability Coordination—Staffing) and PER–005–1 (System Personnel Training), submitted to the Commission for approval by the North American Electric Reliability Corporation, the Electric Reliability Organization certified by the Commission. The approved Reliability Standards require reliability coordinators, balancing authorities, and transmission operators to establish a training program for their system operators, verify each of their system operators' capability to perform tasks, and provide emergency operations training to every system operator. The Commission also approves NERC's proposal to retire two existing PER Reliability Standards that are replaced by the standards approved in this Final Rule.

DATES: *Effective Date:* This rule will become effective January 25, 2011.

FOR FURTHER INFORMATION CONTACT: Karin L. Larson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8236. Kenneth U. Hubona (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 1800 Dual Highway, Suite 201, Hagerstown, MD 21740, (301) 665–1608.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves two Personnel Performance, Training and Qualifications (PER) Reliability Standards, PER–004–2 (Reliability Coordination—Staffing) and PER–005–1 (System Personnel Training), submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization (ERO) certified by the Commission. The approved Reliability Standards require reliability coordinators, balancing authorities, and transmission operators to establish a training program for their system operators, verify each of their system operators' capability to perform tasks, and provide emergency operations training to every system operator. The Commission also approves NERC's proposal to retire two existing PER Reliability Standards that are replaced by the standards approved in this Final Rule.

I. Background

2. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC,[2] including the four PER Reliability Standards: PER–001–0, PER–002–0, PER–003–0, and PER–004–1.[3] In addition, in Order No. 693, under section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to the PER Reliability Standards to address certain issues identified by the Commission. At issue in the immediate proceeding are two new PER Reliability Standards that would replace the currently effective

[1] 16 U.S.C. 824o.

[2] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[3] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1330–1417.

Reliability Standards PER–002–0 (Operating Personnel Training) and PER–004–1 (Reliability Coordination—Staffing).

Currently Effective Reliability Standard PER–002–0

3. Currently effective Reliability Standard PER–002–0 requires each transmission operator and balancing authority to be staffed with adequately trained operating personnel.[4] Specifically, PER–002–0: (1) Directs each transmission operator and balancing authority to have a training program for all operating personnel who occupy positions that either have primary responsibility, directly or through communication with others, for the real-time operation of the Bulk-Power System or who are directly responsible for complying with the NERC Reliability Standards; (2) lists criteria that must be met by the training program; and (3) requires that operating personnel receive at least five days of training in emergency operations each year using realistic simulations.[5]

4. In Order No. 693, the Commission directed NERC, pursuant to section 215(d)(5) of the FPA, to develop the following modifications to PER–002–0: (1) Identify the expectations of the training for each job function; (2) develop training programs tailored to each job function with consideration of the individual training needs of the personnel; (3) expand the applicability of the training requirements to include: reliability coordinators, local transmission control center operator personnel, generator operators centrally-located at a generation control center with a direct impact on the reliable operation of the Bulk-Power System, and operations planning and operations support staff who carry out outage planning and assessments and those who develop system operating limits (SOL), interconnection reliability operating limits (IROL), or operating nomograms for real-time operations; (4) use a systematic approach to training methodology for developing new training programs; and (5) include the use of simulators by reliability coordinators, transmission operators, and balancing authorities that have operational control over a significant portion of load and generation.[6]

5. In Order No. 693, the Commission also directed the ERO to determine whether it is feasible to develop meaningful performance metrics associated with the effectiveness of a training program required by currently effective Reliability Standard PER–002–0 and to consider whether personnel who support Energy Management System (EMS) applications should be included in mandatory training pursuant to the Reliability Standard.[7]

Currently Effective Reliability Standard PER–004–1

6. In Order No. 693, the Commission also approved Reliability Standard PER–004–1.[8] This Reliability Standard requires each reliability coordinator to be staffed with adequately trained, NERC-certified operators, 24 hours a day, seven days a week. Further, PER–004–1 requires reliability coordinator operating personnel to have a comprehensive understanding of the area of the Bulk-Power System for which they are responsible.

NERC Petition

7. In a September 30, 2009 filing (NERC Petition),[9] NERC requests Commission approval of proposed Reliability Standards PER–005–1 (System Personnel Training) and PER–004–2 (Reliability Coordination—Staffing), which were developed in response to the Commission's directives in Order No. 693 regarding currently effective Reliability Standard PER–002–0.[10] NERC seeks to concurrently retire currently effective Reliability Standards PER–002–0 and PER–004–1 upon the effective date of the two new Reliability Standards.

8. NERC states that the proposed Reliability Standards "are a significant improvement over the existing Reliability Standards" and recommends Commission approval of the standards as a "significant step in strengthening the quality of operator training programs as necessary for the reliability of the [B]ulk-[P]ower [S]ystem."[11]

Reliability Standard PER–005–1

9. The stated purpose of Reliability Standard PER–005–1 is to ensure system operators performing real-time, reliability-related tasks on the North American bulk electric system are competent to perform those reliability-related tasks.[12] Reliability Standard PER–005–1 applies to reliability coordinators, balancing authorities, and transmission operators.[13] Reliability Standard PER–005–1 contains three main requirements:

- Requirement R1 mandates the use of a systematic approach to training for both new and existing training programs. The requirement further requires applicable entities to create a company-specific, reliability-related task list relevant to Bulk-Power System operation and to design and develop learning objectives and training materials based on the task list performed by its System Operators each calendar year. Finally, the requirement mandates the training be delivered and the training program be evaluated on at least an annual basis to assess its effectiveness.
- Requirement R2 requires the verification of a System Operator's ability to perform the tasks identified in Requirement R1. The requirement also mandates re-verification of a System Operator's ability to perform the tasks within a specified time period when program content is modified.
- Requirement R3 identifies the number of hours of emergency operations training (at least 32 hours) that a System Operator is required to obtain every twelve months. The requirement further identifies those entities required to use simulation technology such as a simulator, virtual technology, or other technology in their emergency operations training programs.[14]

Proposed Reliability Standard PER–005–1 is a new Reliability Standard that is intended to supersede all of currently effective Reliability Standard PER–002–0 as well as Requirements R2, R3, and R4 of currently effective Reliability Standard PER–004–1.

Proposed Reliability Standard PER–004–2

10. Proposed Reliability Standard PER–004–2 modifies PER–004–1 by deleting Requirements R2, R3, and R4, as these three Requirements are incorporated into proposed PER–005–1. Proposed Reliability Standard PER–004–2 simply carries forward, unchanged, the remaining provisions from currently effective PER–004–1, including the associated violation risk factor and violation severity level assignments.

[4] *Id.* P 1331.

[5] Reliability Standard PER–002–0.

[6] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1393.

[7] *Id.* P 1394.

[8] *Id.* P 1417.

[9] *North American Electric Reliability Corp.,* Sept. 30, 2009 Petition for Approval of Proposed Reliability Standards Regarding System Personnel Training (NERC Petition). The two PER Reliability Standards are included as Exhibit A to NERC's Petition. In addition, pursuant to section 40.3 of the Commission's regulations, all Commission-approved Reliability Standards are available on NERC's Web site at *http://www.nerc.com/page.php?cid=2|20. See* 18 CFR. 40.3.

[10] NERC's Petition addresses only the directives in Order No. 693 related to existing Reliability Standard PER–002–0, not the directives related to PER–004–1. *See* NERC Petition at 27.

[11] NERC Petition at 5.

[12] Reliability Standard PER–005–1, Section A.3 (Purpose).

[13] The responsible entities subject to PER–005–1 include: Reliability coordinators, balancing authorities and transmission operators as those entities are defined in the *Glossary of Terms Used in NERC Reliability Standards,* April 20, 2010, *available at http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[14] NERC Petition at 8–9.

Notice of Proposed Rulemaking

11. On June 17, 2010, the Commission issued its Notice of Proposed Rulemaking (NOPR) proposing to approve the two proposed PER Reliability Standards, PER–004–2 and PER–005–1 (and to retire the two superseded standards, PER–002–0 and PER–004–1).[15] With respect to Reliability Standard PER–005–1, the NOPR proposed to direct NERC to: (1) Modify PER–005–1 to explicitly require training for local transmission control center personnel, and (2) to evaluate the feasibility of developing meaningful performance metrics to evaluate the effectiveness of PER–005–1. In addition, in the NOPR, the Commission sought clarification from NERC and/or industry comments on several specific aspects of proposed Reliability Standard PER–005–1, including: (1) Whether three specific training requirements are carried over from PER–004–1 to PER–005–1 and are enforceable as part of the systematic approach to training umbrella; (2) whether PER–005–1, R1.2, through the systematic approach to training, adequately requires entities to develop training programs tailored to each job function with consideration of the individual training needs of the personnel; (3) whether PER–005–1, R3.1 requires the use of simulators specific to an operator's own system and if not, whether it is feasible or practical to mandate the use of simulators that are specific to the operator's system; (4) whether the proposed two- and three-year lead time prior to certain Requirements in PER–005–1 become effective are necessary and the feasibility of staggering the retirement of currently effective Reliability Standards PER–002–0 and PER–004–1; and (5) whether it is feasible for NERC to complete the standards development project to expand applicability of PER–005 to include certain generator operators and operations planning and operations support staff by fourth quarter 2011. The Commission also proposed to approve NERC's proposed retirement of currently effective Reliability Standards, PER–002–0 and PER–004–1, which will be superseded by the two new standards.

12. In response to the NOPR, comments were filed by 28 interested parties. These comments assisted us in the evaluation of NERC's proposal. In the discussion below, we address the issues raised by these comments. Appendix A to this Final Rule lists the entities that filed comments on the NOPR.

II. Discussion

A. Approval of PER–004–2 and PER–005–1

13. In the NOPR, the Commission proposed to approve the two PER Reliability Standards filed by NERC in this proceeding as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission stated that proposed Reliability Standards PER–005–1 and PER–004–2 represent an improvement in training requirements.

Comments

14. Many commenters support approving the two proposed Reliability Standards PER–004–2 and PER–005–1.[16] NERC reiterates in its comments that implementation of Reliability Standards PER–005–1 and PER–004–2 will achieve a significant improvement in the reliability of the Bulk-Power System and, therefore, it is supportive of the Commission's proposal to approve the two standards. APPA states that the proposed PER standards strike the right balance among costs, flexibility and performance, and that PER–005–1 and PER–004–2 should be approved without modification. Dominion notes that the implementation of the more stringent requirements of PER–005–1, including the adoption of a systematic approach to training for new and existing system operator training programs, recognizes the criticality of such training and contains a logical and reasonable approach to providing the appropriate personnel with the necessary training.

15. EEI states that if the Reliability Standards are approved, compliance with both PER–004–2 and PER–005–1 will support the reliability of the Bulk-Power System by measuring competence against a list of specific task requirements. EEI also comments that by implementing training requirements that test specific competencies, the proposed Reliability Standard PER–005–1 provides greater clarity, thus improving its enforceability. No commenter objects to the approval of the two training Reliability Standards.

Commission Determination

16. The Commission adopts the NOPR proposal and approves Reliability Standard PER–004–2 and PER–005–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[17] By assigning a significant amount of structure to the training programs for the principal operators of the Bulk-Power System, namely reliability coordinators, balancing authorities and transmission operators, the two proposed Reliability Standards will enhance the reliability of the Bulk-Power System. Moreover, the two proposed Reliability Standards represent a step forward in implementing a key recommendation from the 2003 Blackout Report[18] by addressing an identified gap where operations personnel were not adequately trained to maintain reliable operation under emergency conditions.

17. The Commission is not directing any modifications to the substantive requirements of the two new Reliability Standards, PER–005–1 or PER–004–2. Nevertheless, as discussed in greater detail below, the Commission has several concerns regarding certain training issues. To address these concerns, and as discussed in greater detail below, the Commission is issuing directives that the ERO: (1) Consider the necessity of developing an implementation plan for entities that become subject to PER–005–1, Requirement R3.1 after Requirement R3.1 is in effect, and (2) develop a Reliability Standard, through the ERO's Reliability Standards development process, conducted pursuant to its Standard Processes Manual, establishing training requirements for local transmission control center operator personnel.

B. Implementation Timeline

18. In the NOPR, the Commission expressed concern about NERC's proposed use of staggered effective dates for the two proposed Reliability Standards, which Reliability Standards modify currently effective standards. The Commission questioned whether staggered effective dates could create a gap in compliance and enforceability. Specifically, NERC proposed to make the various requirements in PER–005–1 mandatory and enforceable in three stages over a three-year period. The Commission also questioned the need for the proposed two- and three-year lead times before certain Requirements in PER–005–1 become mandatory and enforceable.

[15] *System Personnel Training Reliability Standards,* 75 FR 35689 (June 17, 2010), FERC Stats. & Regs. ¶ 32,661 (2010) (NOPR).

[16] *See* comments of APPA, Dominion, EEI, IESO, NERC, NRECA, PG&E, Platte River, Wisconsin Electric, and WECC.

[17] 16 U.S.C. 824o(d)(2).

[18] *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations,* (April 2004) (Blackout Report), *available at http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

Comments

19. NERC's comments clarify the proposed effective dates for each of the new Requirements in PER–005–1 and PER–004–2 as well as the corresponding retirement dates of the currently effective Requirements in PER–002–0 and PER–004–1. NERC included in its comments a table that specifies the retirement and effective date for each Requirement in each of the affected Reliability Standards, specifically, currently effective PER–002–0 and PER–004–1 and proposed Reliability Standards PER–004–2 and PER–005–1. This table is reproduced in Appendix B of this Final Rule. Further, NERC provides justification for the proposed two- and three-year lead times for the effective date for some of the proposed Requirements in PER–005–1. Specifically, NERC states that the 24-month implementation timeframe of proposed PER–005–1, Requirements R1 and R2 allows flexibility in developing and implementing the training programs that use a systematic approach to training, and is structured and tailored to the functions that each entity performs in operating the Bulk-Power System. Additionally, NERC explains that the 36-month implementation timeframe for Requirement R3.1 in the proposed standard PER–005–1 allows entities with simulation technology sufficient time to integrate the use of this technology as a core component of those programs going forward and allows entities without simulation technology the needed time to secure and integrate simulation technology. Finally, NERC states that it reviewed the staggered effective/retirement dates and did not find any overlaps or gaps.

20. The majority of the commenters generally support NERC's proposed effective and retirement dates.[19] Many of these commenters state that if the Commission rejects the use of staggered effective and retirement dates, then in the alternative, the Commission should impose a uniform effective date that is the first day of the first calendar quarter, 36 months after FERC approval.[20] BGE, GSOC and GTC, KCP&L, SPP, and Westar generally support eliminating the staggered effective dates and instead setting this uniform effective/retirement date.

21. EEI raises a concern regarding the effective date for Reliability Standard PER–005–1, Requirement 3.1. Specifically, EEI states that although Reliability Standard PER–005–1 addresses lead times for compliance based on regulator approval of the standards, it does not address the situation where Requirement 3.1 is not applicable to certain entities at the time of the regulatory effective date of the standard, but later becomes applicable to those entities. Specifically, with respect to PER–005–1, Requirement R3.1, which requires simulator training for entities with established interconnection reliability operating limits (IROLs),[21] EEI states that if an entity does not have established IROLs when the Reliability Standard PER–005–1 becomes effective, but later due to system changes an IROL is invoked, the standard does not specify when the requirements for simulation training (Requirement R3.1) would be mandatory and enforceable for such an entity. EEI states that because entities with established IROLs would initially have 36 months to comply with the provisions of Requirement R3.1; i.e., to develop simulation training, that the same 36 month compliance lead time should also be afforded to all entities with future established IROLs. EEI requests that the Commission direct NERC to modify the effective date specified in Reliability Standard PER–005–1, section 5.1 to grant a 36-month lead time for entities with newly established IROLs or operating guides to be compliant with Requirement 3.1.

Commission Determination

22. The Commission finds that the proposed staggered implementation schedule for PER–005–1 and PER–004–2 and the corresponding retirement schedule for PER–002–0 and PER–004–1 strikes a reasonable balance between the need for timely reform and the needs of the entities that will be subject to PER–005–1 to develop and implement training programs utilizing a systematic approach to training and use of simulators as a training tool. The effective and retirement date table provided by NERC in its comments and incorporated herein as Appendix B demonstrates that there are no apparent overlaps or gaps between the retirement of PER–002–0 and PER–004–1 and the effectiveness of the requirements in the new Reliability Standards, PER–005–1 and PER–004–2.

23. The Commission finds that the commenters that advocate for a uniform effective date of 36-months have not adequately justified such a lengthy lead time for a Reliability Standard that will not impose entirely new requirements. Rather, PER–005–1 requires applicable entities to build upon and improve the existing training programs that are in place under currently effective PER–002–0. Accordingly, as approved, PER–004–2 in its entirety and PER–005–1, Requirement R3 shall become effective on the first day of the first calendar quarter after regulatory approval.[22] PER–005–1, Requirements R1, R1.1, R1.1.1, R1.2, R1.3, R1.4, R2, and R2.1 shall become effective on the first day of the first calendar quarter, twenty-four months after regulatory approval. And, finally, PER–005–1, Requirements R3.1 shall become effective on the first day of the first calendar quarter, thirty-six months after regulatory approval.

24. With respect to EEI's comment regarding the effective date for entities that may become, in the future, subject to the simulator training requirement in PER–005–1, R3.1, the Commission believes that this issue should be considered by the ERO. We note that, with respect to the Critical Infrastructure Protection (CIP) Reliability Standards, NERC has developed a separate implementation plan that essentially gives responsible entities some lead time before newly acquired assets must be in compliance with the effective CIP Reliability Standards.[23] We direct NERC to consider the necessity of developing a similar implementation plan with respect to PER–005–1, Requirement R3.1.

C. Systematic Approach to Training

25. A systematic approach to training is a widely-accepted methodology that ensures training is efficiently and effectively conducted and is directly related to the needs of the position in question.[24] To achieve training results, the objectives of a systematic approach to training include: management and administration of training and qualification programs; development and qualification of training staff; trainee entry-level requirements; determination of training program content; design and development of

[19] *See* comments submitted by BPA, ITC, Minnesota Power, Montana-Dakota, NV Energy, NorthWestern, PG&E, Platte River, Portland, and WECC.

[20] *See* comments submitted by Minnesota Power, Montana-Dakota, PG&E, and WECC.

[21] *See* NERC Glossary of Terms at *http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[22] "Regulatory approval" for these two Reliability Standards refers to approval by the Commission in a final rule. The date of the Commission's regulatory approval is not the date that the final rule is issued by the Commission, rather, in this case, it is 60 days after the date the final rule is published in the **Federal Register**.

[23] *See North American Electric Reliability Corp.,* 130 FERC ¶ 61,271, at P 15 (2010) (approving the Implementation Plan for Newly Identified Cyber Assets).

[24] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1382.

training programs; conduct of training; trainee examinations and evaluations; and training program evaluation.

NOPR

26. In the NOPR, the Commission agreed with NERC that proposed Reliability Standard PER–005–1, Requirement R1 met the Commission's directive to "develop a modification to PER–002–2 (or a new Reliability Standard) that uses the systematic approach to training methodology." [25] However, the Commission noted that the generic reference to systematic approach to training contained in proposed PER–005–1 Requirement R1 raised the question of whether certain Order No. 693 directives and certain specific training requirements that are explicitly set forth in the currently effective Reliability Standards PER–002–0 and PER–004–1, which are to be retired, are fully and adequately captured under the systematic approach to training umbrella. The Commission questioned whether the following three currently effective training requirements from PER–002–0 and PER–004–1 are incorporated in proposed Reliability Standard PER–005–1: (i) Understanding of reliability coordinator area, (ii) continual training, and (iii) training staff identity and competency. In the NOPR, the Commission sought comment on its understanding of the carryover of these three currently enforceable compliance obligations.

1. Understanding of Reliability Coordinator Area

27. Currently effective Reliability Standard PER–004–1, Requirements R3 and R4 provide that reliability coordinator operating personnel "shall have a comprehensive understanding of the Reliability Coordinator Area and interactions with neighboring Reliability Coordinator areas" and "shall have an extensive understanding of the Balancing Authorities, Transmission Operators, and Generation Operators within the Reliability Coordinator Area, including the operating staff, operating practices and procedures * * *." [26] NERC states that these two requirements are supplanted by and addressed more fully in proposed Reliability Standard PER–005–1, Requirements R1 and R2. However, proposed Reliability Standard PER–005–1 does not explicitly require reliability coordinator operating personnel to have a comprehensive understanding of the reliability coordinator area or an extensive understanding of the balancing authorities, transmission operators, and generation operators within the reliability coordinator area. In order to clarify that these requirements are clear and enforceable under proposed Reliability Standard PER–005–1, the Commission sought an explanation from NERC and comments from the general public whether these existing requirements are enforceable under the proposed Reliability Standard PER–005–1 and whether these requirements are clear or should be more explicit.

Comments

28. Most commenters agree that comprehensive understanding of the reliability coordinator area is fully addressed by PER–005–1, Requirements R1 and R2 through the use of a systematic approach to training.[27] For example, Dominion supports proposed PER–005–1, Requirements R1 and R2 because the requirements are clear, measurable, and eliminate the subjectivity of the phrase "comprehensive understanding" that currently exists under the current PER–004–1, Requirement R3. Dominion believes that proper implementation of a systematic approach to training will address the Commission's concern that operating personnel may not have a proper understanding of their system and interactions with neighboring systems without resurrecting the vague language in PER–004–1. However, other commenters, including ITC, MidAmerican, and SPP, state that because the requirement to have a "comprehensive understanding of the reliability coordinator's area" is not explicitly stated in PER–005–1, it will be difficult to enforce.

29. NERC states that PER–005–1 implements a defense-in-depth approach to ensure that the reliability coordinator's system operators have a comprehensive understanding of their reliability coordinator area. NERC believes this approach ensures that system operators have the tools to effectively monitor and direct actions within the reliability coordinator area in support of the Bulk-Power System. NERC provides examples of how proposed PER–005–1 ensures that the reliability coordinator's system operators will have detailed knowledge of their reliability coordinator area.

Commission Determination

30. Based on NERC's explanation, the Commission agrees that the existing requirements contained in PER–004–1, which require reliability coordinators to have a comprehensive understanding of the reliability coordinator area and interactions with neighboring reliability coordinator areas and an extensive understanding of the balancing authorities, transmission operators, and generation operators within the reliability coordinator area, are adequately captured and enforceable under proposed Reliability Standard PER–005–1.

2. Continual Training

31. Currently effective Reliability Standard PER–002–0, Requirement R3.2 explicitly mandates that "the training program must include a plan for the initial and *continuing* training of Transmission Operators and Balancing Authorities operating personnel." In the NOPR, the Commission sought an explanation from NERC, and comment from the general public, whether continuing training is an enforceable requirement under proposed Reliability Standard PER–005–1 and whether this requirement is clear or should be more explicit.

Comments

32. NERC comments that continual training is an enforceable requirement under PER–005–1, Requirement R1 as a fundamental aspect of a systematic approach to training. Most commenters agree with NERC that continual training is an inherent aspect of the systematic approach to training.[28] For example, the ISO/RTO Council states that PER–005–1 is superior to the previous continual training requirement and will be easily measured and enforced and thus does not need to be more explicit.

33. KCP&L believes continuing training is not necessary for routine tasks, only non-routine. MidAmerican and NV Energy both argue that explicit language addressing continual training is necessary to be an enforceable requirement.

Commission Determination

34. Based on NERC's and the majority of the commenters' affirmation that continual training is a fundamental part of a systematic approach to training and an enforceable requirement under PER–005–1, we find that any systematic approach to training, including the

[25] NOPR, FERC Stats. & Regs ¶ 32,601 at P 25 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1380).

[26] *See* Reliability Standard PER–004–1, Requirements R3 and R4.

[27] *See* comments of BPA, Dominion, GSOC & GTC, IESO, ISO/RTO Council, KCP&L, Minnesota Power, Montana Dakota, NV Energy, NERC, PG&E, Portland, Westar, and WECC.

[28] *See* comments of BPA, GSOC & GTC, IESO, ISO/RTO Council, ITC, Minnesota Power, Montana-Dakota, NV Energy, NorthWestern, PG&E, Platte River, Portland, Westar, and WECC.

systematic approach to training mandated by Reliability Standard PER–005–1, would entail continual training to refresh system operators' knowledge and to cover any new tasks relevant to the operation of the Bulk-Power System.

3. Training Staff Identity and Competency

35. In the NOPR, the Commission noted that currently effective Reliability Standard PER–002–0, Requirement R3.4 requires a training program in which "[t]raining staff must be identified, and the staff must be competent in both knowledge of system operations and instructional capabilities." The Commission further noted that this requirement is not explicitly provided in PER–005–1. As such, the NOPR sought clarification as to (i) how and whether a systematic approach to training requires training staff to be identified, and (ii) if not, the mechanism by which training staff will be identified and its competency ensured. The Commission also invited comment on whether this clarification should be made explicit so that entities clearly understand their compliance obligations.

Comments

36. NERC agrees with the Commission that PER–002–0, Requirement R3.4, which requires a training program in which training staff must be identified and competent in system operations and instructional capabilities, is an important requirement and proposes to reassess whether this requirement should be made more explicit in a later version of PER–005–1 so that entities can understand their compliance obligations.

37. The majority of commenters agree that training staff identification and competency are inherent in a systematic approach to training, and that, as such, no modification of proposed PER–005–1 is necessary.[29] However, some commenters disagree and argue that PER–005–1 should have an explicit requirement similar to Requirement R3.4 in PER–002–0 mandating training staff to be identified and be competent in system operations and instructional capabilities.[30] Other commenters state that the systematic approach to training does not require training staff to be identified or their competency ensured, but argue that such a requirement is not necessary and potentially detrimental.[31] For example, ITC believes competency of training staff should be determined by entities internally during the hiring process and companies should not be limited by a prescriptive requirement that does not allow for company discretion during the hiring process.

Commission Determination

38. Based on the comments received, the Commission concludes that the current requirement for each training program (that training staff must be identified and that such staff must be competent in both knowledge of system operations and instructional capabilities) is inherent in any systematic approach to training that a registered entity would use to meet this requirement, and thus is an enforceable component of Requirement R1 under the proposed standard. However, given the number of commenters that argue that it is necessary for the current training program requirement to be explicitly stated in the proposed training standard, we agree that NERC should follow through on its proposal in its comments to reassess whether this requirement should be made more explicit in a later version of PER–005–1.

D. Training Expectations for Each Job Function/Tailored Training NOPR Proposal

39. Proposed Reliability Standard PER–005–1, Requirement R1.2 mandates applicable entities to "design and develop learning objectives and training materials based on the task list created in R1.1."[32] In the NOPR, the Commission noted that it believes that NERC has complied with the directive to require entities to identify the expectations of the training for each job function and develop training programs tailored to each job function with consideration of the individual training needs of their personnel. The Commission took the view in the NOPR that the systematic approach to training used to satisfy PER–005–1, Requirement R1 would assess factors such as educational, technical experience, and medical requirements that candidates must possess before entering a given training program. With the above understanding, the Commission concluded that the systematic approach to training methodology required in Reliability Standard PER–005–1, Requirement R1 satisfies the Commission's directive for Order No. 693 to develop a modification that identifies the expectations of the training for each job function and develops training programs tailored to each job function with consideration of the individual training needs of the personnel. In the NOPR, the Commission sought comment on its understanding that PER–005–1, Requirement R1.2 requires that the learning objectives and training materials be developed with consideration of the individual needs of each operator.

Comments

40. NERC agrees with the Commission that learning objectives and training materials are to be developed for each job function. NERC believes that using a systematic approach to training allows each entity to tailor its training program to best meet the training needs of the function performed by System Operators.

41. A number of commenters[33] agree with NERC and affirm the Commission's understanding that a systematic approach to training requires development of tailored training. NorthWestern concurs that PER–005–1 requires the training materials to be tailored to the individual needs of each operator. For example, IESO believes that the systematic approach to training process will ensure that the necessary knowledge, skills and abilities are provided in the development of learning objectives and associated training materials. The ISO/RTO Council contends that PER–005 addresses function/task-specific training and not person-specific training or personal development. With respect to Requirement R1.2, the ISO/RTO Council interprets the Commission's statement that "* * * requires that the learning objectives and training materials be developed with consideration of the individual needs of each operator. * * *" as requiring an entity to address the knowledge and skill gaps of individual system operators with respect to the reliability tasks they are expected to perform.[34] The ISO/RTO Council supports the term "systematic approach to training (in lower case)" as used in the Reliability Standard because the lower case term provides registered entities flexibility in complying with the standard.[35]

42. SPP and Westar did not take a position on the issue; rather, they request that the Commission clarify what is meant by "consideration of the

[29] *See* comments of GSOC & GTC, Minnesota Power, Montana Dakota, NRECA, NV Energy, PG&E, Platte River, Portland, SPP, and Westar.

[30] *See* comments of BGE, BPA, and MidAmerican.

[31] *See* comments of IESO, ISO/RTO Council, ITC, KCP&L, NorthWestern, and Wisconsin Electric.

[32] NERC Petition at 27 (quoting proposed Reliability Standard PER–005–1, Requirement R1.2).

[33] *See* comments of BPA, GSOC & GTC, NV Energy, NorthWestern, PG&E, and Platte River.

[34] *See* IRC Comments at 7.

[35] *Id.*

individual needs of each operator." BG&E recommends that the Commission make more explicit the requirement to implement the Department of Energy Handbook on the systematic approach to training [36] as the mandatory standardized methodology industry-wide, and expresses the view that the DOE Handbook is the most stringent set of standards available, has the longest track record of proven successful results, and is familiar to the industry. BG&E identifies the following expectations that training should include: (1) Customized, task-based training; (2) annual assessment of operator needs; and (3) individualized training on any task for which the trainee failed to achieve satisfactory standards during the annual training.

43. One commenter, Wisconsin Electric, disagrees with the Commission's "understanding" on this issue. Wisconsin Electric expresses several concerns with the following statement in the NOPR:

> Based on our review of the Systematic Approach to Training methodology used by the Department of Energy, we understand that a Systematic Approach to Training would assess factors such as educational, technical, experience, and medical requirements that candidates must possess before entering a given training program. With the above understanding, we believe that the Systematic Approach to Training methodology, as proposed in Reliability Standard PER–005–1, satisfies the Commission directive to develop a modification that identifies the expectations of the training for each job function and develops training programs tailored to each job function with consideration of the individual training needs of the personnel.[37]

Specifically, Wisconsin Electric is concerned that this would add a number of elements to PER–005 and would create confusion over the scope of the compliance obligation. Wisconsin Electric states that this language appears to impose the Department of Energy's Systematic Approach to Training as the only acceptable methodology, which, in effect, precludes entities from adopting another approach. Wisconsin Electric is also concerned that the factors that a candidate must possess before entering a training program create a de facto compliance checklist that would exist apart from the language of the Reliability Standard. Wisconsin Electric objects to the expansion of NERC requirements to include assessment of medical condition of its personnel. Wisconsin Electric believes that the Commission should approve PER–005–1 as written without conditioning its approval on additional, unstated requirements.

Commission Determination

44. Based on NERC's and other commenters' affirmation of the Commission's understanding as stated in the NOPR, the Commission confirms that Requirement R1.2 of proposed Reliability Standard PER–005–1 requires that the learning objectives and training materials be developed with consideration of the individual needs of each operator. In response to Wisconsin Electric, BG&E and the ISO/RTO Council, the Commission clarifies that it is not mandating the use of the specific Systematic Approach to Training methodology used by the Department of Energy. However, we believe that the Department of Energy's Systematic Approach to Training methodology as set forth in the DOE Handbook is a particularly good and relevant model to use.

45. DOE's Handbook is relevant for two reasons. First, it was designed to assist facilities, specifically nuclear facilities, that are within the same general industry as electric power facilities.[38] Second, the DOE Handbook was written on the assumption that the user, a facility, is currently not using the DOE Systematic Approach to Training model for their training programs, which is very likely the case with respect to entities subject to PER–005–1.[39] Thus, the DOE Handbook is particularly relevant to entities that transition to a systematic approach to training. We note that the DOE Handbook was compiled from a number of sources including the Institute of Nuclear Power Operations' Principles of Training System Development as well as in collaboration with personnel representing DOE contractors and private industry.[40] Moreover, the DOE Handbook provides reasonable flexibility when implementing a systematic approach to training in various settings.[41]

46. Finally, SPP and Westar request that the Commission clarify what is meant by "consideration of the individual needs of each operator." The Commission provides the following clarification. A training plan is designed to prepare *individuals* to perform their jobs. More specifically, a training plan should address gaps between the skills necessary to accomplish a particular job task and an operator's competency to carry out that task. Because of the emphasis on the individual, to be effective, a training plan must take into consideration the individual needs of the trainee, which includes the trainee's education level, technical experience, and relevant medical requirements.

E. Simulation Training

47. In Order No. 693, the Commission directed NERC to develop a requirement mandating simulator training for reliability coordinators, transmission operators and balancing authorities that have operational control over a significant portion of load and generation. Recognizing that cost of simulator training is an issue, the Commission allowed for the use of simulators to be dependent on an entity's role and size.[42]

NOPR Proposal

48. In the NOPR, the Commission found that proposed Reliability Standard PER–005–1, Requirement R3.1 meets this Order No. 693 directive regarding training using simulators. However, the Commission sought comment on the terminology in Requirement R3.1 which provides that the emergency operations training should use "simulation technology such as a simulator, virtual technology, or other technology that *replicates the operational behavior of the BES during normal and emergency conditions.*" Specifically, the NOPR asked NERC to clarify: (i) Whether the language in R3.1, "replicates the operational behavior of

[36] *See* U.S. Department of Energy's Handbook, DOE–HDBK–1078–94, Training Program Handbook: A Systematic Approach to Training (August 1994), *available at http://www.hss.energy.gov/nuclearsafety/ns/techstds/standard/hdbk1078/hdbk1078.pdf* (DOE Handbook).

[37] NOPR, FERC Stats & Regs. ¶ 32,661 at P 32.

[38] DOE has noted that although its training handbooks related to the Systematic Approach to Training were prepared primarily for DOE nuclear facilities, the information can be effectively used by any other type of facility. *See* DOE Handbook, DOE–HDBK–1074–95 at Foreword (January 1995) (Alternative Systematic Approach to Training Handbook), *available at http://www.hss.energy.gov/nuclearsafety/ns/techstds/standard/hdbk1074/hdb1074a.html.*

[39] *See* DOE Handbook at 1.2. The DOE Handbook acknowledges that many nuclear facilities already had effective training programs in place that contain many performance-based characteristics. Accordingly, DOE Handbook states that facilities with existing training programs should not discard such programs; rather, they should validate and supplement the existing training content where necessary using systematic methods. *Id.*

[40] *See* DOE Handbook at 1.1.

[41] *See id.* at 1.2. In developing the DOE Handbook, DOE noted that the handbook describes the more classical concept and approach to systematically establishing training programs. However, in some cases this classical approach has proven to be time- and labor-intensive, and therefore encourages users of the handbook to consider the variety of training options that are available for establishing and maintaining personnel training and qualification programs. DOE further found that blending classical and alternative systematic approaches to training methods often yields the most effective product. *See* DOE Handbook at iii (the Foreword).

[42] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1390.

the BES," requires the use of simulators specific to an operator's own system; (ii) if not, whether operators trained on simulators that replicate systems other than their own will be adequately trained to respond to emergency conditions on their own system; and (iii) whether it is feasible or practicable (including cost considerations) to require use of simulators that realistically replicate the entity's own topology and operating conditions; i.e., to require "custom" simulators.

Comments

49. NERC and all others who commented on the simulator training issue agree that PER–005–1, Requirement R3.1, does not require the use of custom simulators.[43] NERC, and other commenters,[44] state that Requirement R3.1 requires a simulator to replicate the operational behavioral characteristics of the bulk electric system through the use of simulation technology. Commenters argue that the purpose of simulators is to train the operator in principles that can be applied to any system. Specifically, NRECA explains that the intent of PER–005–1, Requirement R3.1 is not to require simulators that replicate every aspect of an entity's own topology and operating conditions. Rather, the intent is to replicate the operational behavioral characteristics of the bulk electric system through the use of more generalized simulation technology.

50. All commenters, except for BPA, agree that the simulator training requirement *should not* require custom simulators. Some commenters argue that custom simulators are not necessary.[45] These commenters argue that it is the understanding of situational conditions and the response to them that is the hallmark of successful operator training, and such training does not require the use of simulators specific to an operator's own system.

51. For example, NRECA states that it is an understanding of the situational conditions and the response to them that is the key to successful operator training, and those do not require the use of simulators specific to an operator's own system. NRECA further described that simulation of operational scenarios such as: frequency response of generators, VAR flow from high voltage to low voltage, and restoration load pick-up and the potential for under-frequency tripping, are concepts common to all systems, noting that a simulator can address and train on these issues irrespective of individual system characteristics. Minnesota Power and Montana Dakota explain that, in general, elements of the bulk electric system exhibit behaviors based upon the characteristics of each element, not upon their specific location in a particular system. They posit that it is the understanding of the situational conditions and the response to them that is the key to successful operator training and that understanding does not require the use of simulators specific to an operator's own system. EEI notes that the issue of custom versus generic simulators was discussed extensively by the PER–005–1 drafting team and argues that custom simulators are not necessary to properly train personnel. EEI urges the Commission to approve PER–005–1, R3.1 without change and to allow NERC to monitor the effectiveness of the simulator training requirement for possible gaps.

52. Other commenters argue against mandating custom simulators because the cost of custom simulators would far exceed the benefit.[46] APPA states that the additional cost of developing and maintaining a realistic full-scale, system-specific simulator for a small balancing authority or transmission operator would likely exceed the benefits. No commenter provided specific estimates of the incremental increase in cost of custom simulators. EEI, acknowledging that it does not have specific cost information, noted that accurate Bulk-Power System modeling and maintenance would be a significant cost driver. ITC states that although it believes that the use of system simulators specific to an operator's own system would better prepare a system operator for emergency conditions, the cost of custom simulators could likely outweigh the reliability benefits to small operators. Portland General Electric estimates that purchase, implementation and maintenance of a system-specific simulator could cost several hundred thousand dollars in up-front costs and would necessitate the addition of engineering personnel for programming and ongoing maintenance.

53. BPA, the sole commenter that endorses modifying PER–005–1 to mandate the use of custom simulators, notes that it uses custom simulators. BPA acknowledges that the cost of implementing and maintaining a high fidelity simulator is significant, but suggests an alternative approach of developing a centralized, high fidelity simulator that realistically replicates the entire interconnection that could be remotely accessed by entities for training exercises.

54. NERC notes in its comments that custom simulators could be important in ensuring the reliability of the BES. NERC further states that while a high fidelity simulator may not be necessary to ensure bulk electric system reliability, NERC agrees that simulators used for training that provide a useful representation of the system that the operators work with may warrant further consideration in a subsequent version of the proposed standard.[47] EEI appears to agree with NERC, as EEI urges the Commission to allow NERC to implement the new PER–005–1 requirements, gather experience on their effectiveness, and monitor results for possible gaps or challenges that arise with experience.

Commission Determination

55. We affirm NERC's and the industry's understanding that PER–005–1, Requirement R3.1 does not require the use of simulators specific to an operator's own system. While the Commission continues to feel there is value in using custom simulators, we acknowledge that NERC and industry have determined that it is not necessary at this time. However, NERC and other commenters state that there may be potential reliability benefits of some form of custom simulators. NERC has also proposed to consider custom simulators in a subsequent modification of PER–005–1. We appreciate NERC's commitment to continually look at how reliability can be improved and encourage NERC and industry to evaluate the gained reliability in requiring the use of custom simulators.

F. Local Transmission Control Center Operator Personnel Training

56. In Order No. 693, the Commission directed NERC to expand the applicability of currently effective Reliability Standard PER–002–0 to include local transmission control center operator personnel. Order No. 693 provided that the training should be tailored to the functions that local transmission control center operators perform that impact the reliable operation of the Bulk-Power System for both normal and emergency

[43] *See* comments of APPA, BPA, EEI, GSOC & GTC, IESO, ISO/RTO Council, ITC, KCP&L, MidAmerican, Minnesota Power, Montana-Dakota, NRECA, NV Energy, NERC, NorthWestern, PG&E, Platte River, Portland, SPP, and Westar.

[44] *See* comments of APPA, EEI, IESO, ISO/RTO Council, NRECA, Northwestern, PG&E, Platte River, Portland, SPP, and Westar.

[45] *See* comments of EEI, IESO, KCP&L, Minnesota Power, Montana-Dakota, NRECA, NV Energy, and PG&E.

[46] *See* comments of APPA, EEI, ISO/RTO Council, ITC, KCP&L, MidAmerican, Minnesota Power, Montana-Dakota, NRECA, NV Energy, NorthWestern, Platte River, Portland, and SPP.

[47] NERC Comments at 14.

operations.[48] Proposed Reliability Standard PER–005–1, which is intended to supersede existing Reliability Standard PER–002–0, does not include local transmission control center operator personnel in the applicability section. Rather, proposed Reliability Standard PER–005–1, as drafted, is applicable only to the following three functional entities: reliability coordinators, balancing authorities, and transmission operators. NERC explained that its functional model lists the functions that a transmission operator performs, which includes the functions performed by local transmission control center personnel. NERC therefore concluded that, the Order No. 693 directive to include formal training for local transmission control center personnel is addressed in proposed Reliability Standards PER–005–1 because the transmission operator has the ultimate responsibility to ensure that its functional responsibilities are met, even if through other entities.[49]

NOPR Proposal

57. In the NOPR, the Commission rejected NERC's explanation regarding the failure to include local transmission control center operating personnel in the proposed training standard. The Commission stated in the NOPR that, contrary to NERC's suggestion, under proposed Reliability Standard PER–005–1, a transmission operator could not require a local transmission control center operator to receive training if that operator is employed by an entity other than a reliability coordinator, balancing authority, or transmission operator. The Commission noted that with respect to proposed Reliability Standard PER–005–1, the standard requires transmission operators, reliability coordinators, and balancing authorities to establish a training program for the *company-specific* tasks performed by *its* System Operators.[50] Thus the proposed standard only requires implementation of a training program for operators employed by the applicable entity's own company. Accordingly, the NOPR proposed to direct NERC to modify proposed Reliability Standard PER–005–1 to include a provision that explicitly addresses training for local transmission control centers, consistent with the Commission's directive in Order No. 693.

Comments

58. NERC, and all other commenters that address this issue, object to the Commission's proposal to direct NERC to expand the applicability of PER–005–1 to explicitly include local transmission control center personnel. Some commenters agree with NERC's position, stated in its Petition, that the local transmission control center operators will receive the necessary training without explicitly including them as a class subject to PER–005–1.[51] These commenters are concerned that the Commission's directive will require the creation of a new class of registered entities.

59. The majority of commenters [52] state that the term "local transmission control center" is unclear and undefined and, without definition, is subject to broad interpretation. These commenters raise the concern that "if local transmission control center" is not clearly defined, it could result in training requirements applying to non-NERC jurisdictional persons or entities. Commenters appear generally to support a definition that would define local transmission control centers as those which have authority to make decisions concerning the real-time operation of the bulk electric system. Associated Electric proposes a definition of "local transmission control center."

60. NERC and two other commenters [53] suggest that training requirements for local transmission control center personnel should be developed in a separate project, not as a modification to PER–005–1. NERC advocates developing training standards for local transmission control center personnel in a separate standard because proposed PER–005–1 is focused on improving training requirements for system operators who work for the reliability coordinator, transmission operator, and balancing authority. Further, NERC explains that developing training requirements for these operator personnel in a separate standard will allow that future standard to be modeled after PER–005–1. Accordingly, NERC proposes in its comments to address training requirements for local transmission control center operator personnel through its standards development process as a separate standards development project, after the Commission issues a final order on PER–005–1.

Commission Determination

61. Some commenters question the original directive in Order No. 693 requiring the development of training requirements for local transmission control center personnel by contending, as IESO does, that if individuals at a local control center are simply implementing directives from a transmission operator or a reliability coordinator, then such personnel should not be required to undergo the same rigorous training meant only for those entities who make independent decisions. Specifically, in Order No. 693, the Commission stated:

> The Commission disagrees with those commenters who contend that, because operators at local control centers take direction from NERC-certified operators at the ISO or RTO, they do not need to be addressed by the training requirements of PER–002–0. Rather, as discussed above, these operators maintain authority to act independently to carry out tasks that require real-time operation of the Bulk-Power System including protecting assets, protecting personnel safety, adhering to regulatory requirements and establishing stable islands during system restoration.[54]

Thus, such comments are a collateral attack on Order No. 693 and will not be re-addressed. Issues regarding the rigor or type of training required for operators at local control centers should be vetted through NERC's standards development process as part of the standards drafting and balloting, and ultimately may be raised in comments in any future Commission proceeding in which the proposed standard(s) or modified standard(s) are before the Commission.

62. The Commission understands that local transmission control center personnel exercise control over a significant portion of the Bulk-Power System under the supervision of the personnel of the registered transmission operator. This supervision may take the form of directing specific step-by-step instructions and at other times may take the form of the implementation of predefined operating procedures. For example, ISO New England, Inc., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc., are registered transmission operators who issue operating instructions that are carried out by local transmission control centers such as PSE&G, PPL Electric Utilities Corp., PECO Energy Company, Baltimore Gas and Electric Co., Consolidated Edison of New York, Inc., National Grid USA, and Long Island

[48] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1348.

[49] NERC Petition at 30.

[50] Reliability Standard PER–005–1, Requirement R1.1 (emphasis added).

[51] *See* comments of IESO, NRECA, and NV Energy.

[52] *See* comments of Associated Electric, Dominion, GSOC & GTC, IESO, ISO/RTO Council, Minnesota Power, Montana Dakota, PG&E, Portland, and SPP.

[53] *See* comments of APPA and EEI.

[54] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1347.

Power Authority, which are not registered transmission operators. The combined peak load of these three RTOs is in excess of 200 gigawatts. In all cases, the local transmission control center personnel must understand what they are required to do in the performance of their duties to perform them effectively on a timely basis. Thus, omitting such local transmission control center personnel from the PER–005–1 training requirements creates a reliability gap. The Commission believes that identifying these entities would be a valuable step in delineating the magnitude of that gap.

63. NERC proposes in its comments to address the training of local transmission control center operating personnel in a different standard than PER–005–1.[55] The Commission's concern in the NOPR was that local control center operating personnel be trained. We leave it to NERC's discretion whether to revise Reliability Standard PER–005–1 to accomplish this goal or to require local control center operating personnel to be trained in a separate Reliability Standard. The Commission notes that proposed Reliability Standard PER–005–1 generally requires the applicable entity to establish and implement a training program, verify operators' capabilities, and provide emergency training. The specific training, based on the Systematic Approach to Training methodology, is determined by the entity based on company-specific reliability-related tasks performed by its operators. As discussed above, the Systematic Approach to Training methodology is not job specific and, rather, provides flexibility to meet the needs of varying organizations and job skills. In its comments, NERC has said that it intends to generally model local control center operating personnel training on PER–005–1. Thus, we expect that the Reliability Standard that is developed will require training for local transmission control center that does not significantly diverge from the training requirements set forth in PER–005–1. If the ERO proposes a Reliability Standard that differs significantly from the approved PER–005–1 requirements, NERC must provide in its petition seeking approval of such future standard, adequate technical analysis supporting the different approach.

64. Accordingly, we adopt our NOPR proposal and direct the ERO to develop through a separate Reliability Standards development project formal training requirements for local transmission control center operator personnel. Finally, given the numerous comments stating that term "local transmission control center" should be defined, we direct NERC to develop a definition of "local transmission control center" in the standards development project for developing the training requirements for local transmission control center operator personnel. We will not evaluate Associated Electric's proposed definition but, rather, leave it to the ERO to develop an appropriate definition that reflects the scope of local transmission control centers. The Commission will not opine on the appropriate definition of local transmission control center, as this definition can be addressed first using NERC's Reliability Standards Development Procedures.

G. Performance Metrics

65. In Order No. 693, the Commission directed NERC to (1) determine "whether it is feasible to develop meaningful performance metrics associated with the effectiveness of a training program * * *, and if so, develop such performance metrics,"[56] and (2) determine if quantifiable performance metrics can be developed to gauge the effectiveness of the Reliability Standard itself.[57] In its Petition, NERC stated that the systematic approach to training methodology, as set forth in proposed Reliability Standard PER–005–1, sub-requirement R1.4, requires each reliability coordinator, balancing authority and transmission operator to conduct an annual evaluation of the training program and assess whether system operators are receiving effective training. NERC concluded that this annual evaluation "provides a meaningful assessment of the training program" while "[a]n evaluation of how System Operators perform during infrequent, actual events on the system would not provide useful metrics on an ongoing basis."[58] NERC also stated that proposed Reliability Standard PER–005–1 is a training standard, and is not intended to address individual system operator performance apart from the requirements associated with the company-specific reliability-related tasks identified in Requirement R1.

NOPR

66. In the NOPR the Commission sought comment from NERC on whether it considered metrics to evaluate the effectiveness of the Reliability Standard itself, not just metrics to evaluate the effectiveness of the applicable entity's training program under PER–005–1. In addition, the Commission sought comment on possible performance metrics that could be used to assess whether proposed Reliability Standard PER–005–1 achieves its stated purpose. As a result, the Commission proposed to direct NERC to evaluate the feasibility of developing meaningful performance metrics to evaluate the effectiveness of the Reliability Standard related to operator training.

Comments

67. NERC notes that it is working to develop performance measures that will address Reliability Standards in general. NERC emphasizes that performance measures should not be embodied in the Reliability Standard requirements so there is room for flexibility in the development, implementation and modification of such measures. Commenters APPA, Minnesota Power, and Montana-Dakota agree with NERC that the development of metrics to evaluate the effectiveness of a NERC Reliability Standard should uniformly apply to all standards, not to individual standards.

68. Two commenters, BG&E and NorthWestern, generally support the Commission's proposal and request that any action taken to explore the feasibility of developing metrics provide for a transparent stakeholder process. NorthWestern identifies three methods for measuring performance: (1) Use currently monitored operating parameters and incident reports; (2) capitalize on the capabilities of certain entities to monitor and evaluate the response of subordinate entities; and (3) use simulation to evaluate operator performance against a standard set of operating challenges. NorthWestern suggests that metrics to evaluate system operators performing real-time tasks should focus on reliability-related tasks that have the greatest commonality across entities and on characteristics of operation that provide insight into the organizational and operational approach to reliability.

69. Most commenters, however, state that performance metrics for this Reliability Standard are either not feasible[59] or not necessary because of the systematic approach to training methodology.[60] For example, Platte River believes that the feasibility of developing meaningful global

[55] NERC Comments at 15–16.

[56] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1394.

[57] *Id.* P 1379.

[58] NERC Petition at 33–34.

[59] *See* comments of APPA, IESO, ITC, KCP&L, NV Energy, and Platte River.

[60] *See* comments of ISO/RTO Council, MidAmerican, Minnesota Power, Montana-Dakota, PG&E, Portland, and Westar.

performance metrics is low. Platte River also believes it is too difficult to establish specific parameters and to monitor trends across entities because systems are topologically unique and operational situations differ. Commenters note that the systematic approach to training addresses the performance metric because its checks and balances verify that a person can perform the task after training.

Commission Determination

70. The Commission believes that performance metrics should be developed to gauge the effectiveness of a Reliability Standard if it is feasible to do so. We are pleased that NERC is working to develop performance measures that will address reliability standards in general. Based on the comments, it appears that it may be infeasible or, at a minimum, impracticable to develop performance metrics for some individual Reliability Standards; *e.g.,* PER–005–1. However, we find that, based on this project, NERC is already in the process of evaluating the feasibility of developing meaningful performance metrics to evaluate the effectiveness of PER–005–1. The Commission encourages NERC to complete its generic performance measures project.

H. Violation Risk Factors/Violation Severity Levels

NOPR Proposal

71. In the NOPR, the Commission proposed deferring action on the proposed violation risk factors (VRF) and violation severity levels (VSL) for both of the proposed Reliability Standards until the Commission acts on NERC's pending petition in Docket No. RR08–4–005, in which NERC proposes a "roll-up" approach for VRFs and VSL assignments by which NERC would only assign VRFs and VSLs to the main Requirements and not to the sub-Requirements.[61]

Comments

72. The ISO/RTO Council, the sole commenter on this issue, supports the Commission's proposal to defer action on the proposed violation risk factors and violation severity levels assignments. No commenter objected to the proposal to defer action.

Commission Determination

73. The Commission will defer discussion on the proposed violation risk factors and violation severity levels assigned to PER–005–1 and PER–004–2 until after the Commission issues a final order acting on NERC's petition in Docket No. RR08–4–005.

I. Unaddressed Directives

NOPR Proposal

74. The Commission noted in the NOPR that NERC, in developing proposed Reliability Standard PER–005–1, did not comply with the directive in Order No. 693 to expand the applicability of the personnel training Reliability Standard, PER–002–0, to include (i) generator operators centrally-located at a generation control center with a direct impact on the reliable operation of the Bulk-Power System, and (ii) operations planning and operations support staff who carry out outage planning and assessments and those who develop System Operating Limits (SOL), Interconnection Reliability Operating Limits (IROL) or operating nomograms for real-time operations.[62] The Commission also directed, in Order No. 693, NERC to consider whether personnel that support Energy Management System (EMS) applications should be included in mandatory operator personnel training requirements.[63] Noting NERC's proposal to address the expansion of the applicability of the training standard (PER–005–1) and to consider including EMS support personnel in the training standard in a subsequent standards development project, Project 2010–01—Support Personnel Training, the Commission sought comment on whether NERC should target completing Project 2010–01 by the fourth quarter of 2011.

Comments

75. Twenty-five entities commented on this issue.[64] BPA is the only commenter that believes Project 2010–01 can be completed by fourth quarter 2011. The other commenters, including NERC, state that a fourth quarter 2011 deadline is not reasonable. A number of commenters believe that a 24-month deadline would be an appropriate timeframe for NERC to comply with the Order No. 693 directives.

76. NERC states that, with respect to incorporating generator operators into the applicability section of PER–005–1, it must interact with the Commission to obtain more direction before proceeding with the standards development process. NERC commits in its comments to meeting the directive to consider whether personnel who support EMS applications should be included the mandatory training Reliability Standard within 24 months after August 23, 2010.[65]

77. Other commenters such as APPA and Dominion encourage the Commission to allow Project 2010–01 to follow the natural course of the Reliability Standards development procedures without imposing a specific deadline. APPA notes that, in NERC's draft 2011–2013 Reliability Standards Development Plan, Project 2010–01 is fourteenth of seventeen projects which will be initiated in numerical order. Further, APPA states that NERC's Reliability Standards development "pipeline" is already full to capacity. APPA is concerned that a "hard" deadline for Project 2010–01 might delay ongoing projects. APPA encourages the Commission to collaborate with NERC on the priority for Reliability Standards projects in conjunction with the Reliability Standards Development Plan rather than setting deadlines in individual proceedings.

78. With respect to the Order No. 693 directive to expand training to include operations planning and operations support staff who carry out outage planning and assessments and persons who develop SOLs, IROLs or operating nomograms for real-time operations, several commenters raise issues regarding the substance of the original directive. These issues are beyond the scope of the timing issue the Commission raises in the NOPR. For example, Associated Electric urges the Commission to direct NERC to adopt a definition of operations planning and operations support staff that more narrowly identifies those personnel who will be subject to the training standard. GSOC and GTC do not support expanding the applicability of the PER–005–1 training requirements to any other personnel. GSOC and GTC further argue that time spent expanding training requirements to other personnel will take away from their job of supporting their operating personnel, a use of time and resources that could actually decrease reliability.

[61] Docket No. RR08–4–005 comprises NERC's March 5, 2010 Violation Severity Level Compliance Filing submitted in response to Order No. 722 and an August 10, 2009 informational filing in which NERC proposes assigning VRFs and VSLs only to the main Requirements in each Reliability Standard and not to the sub-requirements.

[62] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1393.

[63] *Id.* P 1394.

[64] The twenty-five commenters include: APPA, Associated Electric, BGE, BPA, Constellation, Dominion, EEI, E.ON, EPSA, GSOC & GTC, ISO/RTO Council, ITC, KCP&L, Minnesota Power, Montana-Dakota, NV Energy, NERC, NorthWestern, PG&E, Platte River, Portland, SPP, Westar, WECC, and Wisconsin Electric.

[65] NERC Comments at 21.

79. With respect to the Order No. 693 directive to expand training to include generator operators centrally-located at a generation control center with a direct impact on the reliable operation of the Bulk-Power System, several commenters raise issues regarding the substance of the original directive. These issues also are beyond the scope of the timing issue the Commission raises in the NOPR. For example, Constellation notes that in developing training requirements for generator operators the Reliability Standard should not create onerous training obligations or impose training requirements that conflict with or make existing programs less effective. E.ON comments that there is no sound basis for imposing the same or similar training requirements mandated for transmission operations on generator personnel. E.ON urges the Commission to weigh the complexity of mandating individual plant-specific training programs against the incremental benefit to Bulk-Power System reliability. EPSA seeks clarification regarding several aspects of the scope and intent of the Commission's directive to expand the applicability of PER–005–1 to include generator operators. Specifically, EPSA asks the Commission to reaffirm its finding in Order No. 693 that the training will apply only to employees at generator operators' centrally-located dispatch centers or when a single generator and dispatch center are at the same site. EPSA seeks as well Commission guidance regarding the sufficiency and consistency of existing Regional Transmission Organization/Independent System Operator (RTO/ISO) training programs applicable to generator operators with respect to the reliability training needs identified in the NOPR. EPSA also objects to the suggestion in the NOPR that, in the event that communication is lost with the grid operator, a generator operator would take unilateral action for which its personnel would require training.

80. With respect to the Order No. 693 directive that NERC consider whether EMS personnel should be incorporated into the system operator training Reliability Standard, BGE comments that no separate training is needed for EMS personnel, as EMS personnel already are regularly trained. EEI states that, because the skills and functions of EMS personnel are unique, the development of training requirements for EMS support personnel should take place as a separate, stand-alone development project.

Commission Determination

81. GSOC and GTC, E.ON, and Constellation raise issues regarding the substance and scope of the original Order No. 693 directives. Such comments are a collateral attack on Order No. 693 and will not be re-addressed. Such issues should be vetted through NERC's standards development process as part of the standards drafting and balloting, and ultimately may be raised in comments in a future Commission proceeding in which the proposed standard(s) or modified standard(s) are before the Commission.

82. Associated Electric expressed concern that the NOPR definition of the "operations planning and operations support staff" who should receive training pursuant to the Order No. 693 directive is "broad and will encompass operations planning and operation support staff who engage in tasks that do not directly affect the reliable operation of the bulk electric system." [66] The Commission clarifies that the scope of the Reliability Standard or modification to a Reliability Standard to address training for "operations planning and operations support staff" is limited by the qualifications stated in Order No. 693. Specifically, in Order No. 693, the Commission directed the ERO to develop a modification to PER–002–0 that extends applicability of the training requirements to the operations planning and operations support staff of transmission operators and balancing authorities.[67] The Commission further clarified that such directive applies only to operations planning and operations support personnel who: "Carry out outage coordination and assessments in accordance with Reliability Standards IRO–004–1 and TOP–002–2, and those who determine SOLs and IROLs or operating nomograms in accordance with Reliability Standards IRO–005–1 and TOP–004–0." [68] The NOPR did not expand or alter the scope of this directive as set forth in Order No. 693.

83. EPSA requests clarification of several statements in the NOPR regarding the Order No. 693 directive related to expanding the applicability of the system operator training Reliability Standard to include certain generator operators. First, EPSA expresses concern that the NOPR discussion broadly addresses generator operator personnel in a way that could be construed as subjecting all generator operator personnel, regardless of the disposition of the generating unit and how it fits into the grid and the topology of the grid, to the system operator training requirements. Therefore EPSA seeks clarification that the Commission did not intend for the NOPR to expand the Order No. 693 directive. We confirm that we have not modified the scope of applicability of the Order No. 693 directive regarding generator operator training.[69] As described in Order No. 693, the directive applies to generator operator personnel at a centrally-located dispatch center who receive direction and then develop specific dispatch instructions for plant operators under their control. Those generator operator personnel must receive formal training of the nature provided to system operators under PER–005–1.[70] As clarified in Order No. 693, this group of personnel would include a generator operator's dispatch personnel where a single generator and dispatch center are located at the same site.[71]

84. EPSA also seeks clarification regarding the statement in the NOPR that: "[I]n the event communication is lost, the generator operator personnel must have had sufficient training to take appropriate action to ensure reliability of the Bulk-Power System." [72] EPSA expresses concern that this statement suggests that if communication is lost with the grid operator, the generator operator must take unilateral action for which it requires training. EPSA notes that generator operators do not take such unilateral action nor do they have access to information to make such decisions. Therefore, EPSA asks the Commission to make clear that while communication should be addressed in training requirements for centrally located generator operator dispatch employees, the Commission is not extending related responsibilities or training requirements to generator operator employees. We grant the requested clarification, and affirm that we are not modifying the Order No. 693 directive regarding training for certain generator operator dispatch personnel, nor are we expanding a generator operator's responsibilities.[73]

85. EPSA also raises the issue of potentially overlapping or duplicative training programs. EPSA notes that

[66] Associated Electric's Comments at 6. Associated Electric states that, in the NOPR, the Commission "defines" operations planning and operations support staff as persons "who carry out outage planning and assessments and those who develop SOLs and IROLs, or operating nomograms for real-time operations."

[67] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1393.

[68] *Id.* P 1372.

[69] *See id.* P 1359–61.

[70] *See id.* P 1360.

[71] *Id.* P 1361.

[72] NOPR, FERC Stats. & Regs. ¶ 32,661 at P 58.

[73] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1359–65.

training requirements already exist in organized markets and compliance with them is a condition for market participation, citing PJM and CAISO as examples, and asserts that new training requirements should either mesh with or build upon those already in place. EPSA further notes that regional transmission organizations and independent system operators have training programs for generator operators that ensure that grid participants are well trained on grid operations and the needs of grid operators. EPSA believes that any modified or new Reliability Standard related to generator operator training should not conflict with or supplant the organized markets' existing training requirements. Accordingly, EPSA states that the Commission's "acknowledgment of these existing programs and how they might fit with the expansion of PER–005–1 would provide useful guidance for Project 2010–01." [74] The Commission believes that, in the above-discussion regarding the systematic approach to training, the systematic approach to training methodology is flexible enough to build on existing training programs by validating and supplementing the existing training content, where necessary, using systematic methods.[75] It is important that the relevant generator operator personnel receive the necessary training. Our determination is not intended to limit the source of that training, provided that it meets the requirements of the Reliability Standard.

86. With respect to the time frame within which NERC should complete the unaddressed training directives, the Commission recently issued on order on NERC's three year assessment.[76] That order requires NERC to identify and address all Reliability Standards prioritization matters when submitting its annual Reliability Standard Development plan, beginning with the plan for 2012.[77] The Commission recognizes the importance of a collaborative approach to setting priorities for Reliability Standard projects and NERC's need for flexibility in setting project priorities in order to efficiently utilize the technical expertise available to NERC's standards drafting teams. We anticipate that NERC will include this project in its assessment of its Reliability Standards priorities. With respect to the Order No. 693 directive to consider whether personnel that support EMS applications should be included in the training Reliability Standard, we accept NERC's commitment to satisfy this directive by August 23, 2012.

III. Information Collection Statement

87. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[78] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[79]

88. The Commission solicited comments on the need for and the purpose of the information contained in these two Personal Performance, Training and Qualification Reliability Standards and the corresponding burden to implement them. The Commission received comments on specific requirements in the Reliability Standards, which we address in this Final Rule. The Commission has not directed any modifications to the Requirements in the two Reliability Standards being approved. Thus, the Final Rule does not materially or adversely affect the burden estimates provided in the NOPR.

89. However, the Commission received comments on our reporting burden estimates. Of the twenty-eight entities that filed comments on the NOPR, two entities, the ISO/RTO Council and Westar, comment on the record keeping burden. Both the ISO/RTO Council and Westar note that proposed Reliability Standard PER–005–1 includes a new requirement that applicable entities use a systematic approach to training which includes record-keeping requirements (including a job-task-analysis) that are significantly greater than the Commission's estimates provided in the NOPR. In addition, the ISO/RTO Council asserts that Reliability Standard PER–005–1, as submitted, more than adequately covers appropriate record keeping requirements. With respect to the estimate of the record-keeping requirements, in the NOPR, the Commission considered the inclusion of a systematic approach to training requirement when developing the record-keeping estimates. Moreover, neither commenter provides an estimate of the record-keeping burden. The Commission finds that the two commenters did not provide sufficient information to support increasing the record keeping burden estimates. With respect to the ISO/RTO Council's assertion that PER–005–1, as submitted, more than adequately covers appropriate record keeping requirements, this issue is moot as this final rule does not require NERC to make any modifications to PER–005–1.

90. *Burden Estimate:* The public reporting and records retention burdens for the proposed reporting requirements and the records retention requirement are as follows:

Data collection	Number of new respondents	Number of responses	Record-keeping [80] hours per respondent	Total annual recordkeeping hours
PER–005–1, R1.1: RCs, TOs, and BAs must create a list of bulk electric system reliability-related tasks performed by system operators.	[81] 7	7	40	280
PER–005–1, R1.2: RCs, TOs, and BAs shall design and develop learning objectives and training materials based on its task list.	7	7	60	420
PER–005–1, R2: RCs, TOs, and BAs shall verify system operators' ability to perform each assigned task from applicable task list.	7	7	80	560
PER–005–1, M1: RCs, TOs, and BAs must have available for inspection evidence of using a systematic approach to training to establish and implement a training program.	7	7	50	350
PER–005–1, M1.1: Each RC, TO, and BA must have available for inspection its company-specific, reliability-related task list.	7	7	10	70
PER–005–1, M1.2: Each RC, TO, and BA must have available for inspection its learning objectives and training materials.	7	7	10	70

[74] EPSA Comments at 8.

[75] *See supra* at P 45 & n.40.

[76] *North American Electric Reliability Corporation,* 132 FERC ¶ 61,217 (2010).

[77] *Id.* P 102.

[78] 44 U.S.C. 3507(d).

[79] 5 CFR 1320.11.

Data collection	Number of new respondents	Number of responses	Record-keeping [80] hours per respondent	Total annual recordkeeping hours
PER–005–1, M1.3: RCs, TOs, and BAs must have available for inspection system operator training records.	7	7	10	70
PER–005–1, M1.4: Each RC, TO, and BA must have available for inspection evidence that it performed an annual training program evaluation.	7	7	25	175
PER–005–1, M2: Each RC, TO, and BA must have available for inspection evidence that it verified that its system operators can perform each assigned task from the training task list.	7	7	20	140
PER–005–1, M3: RCs, TOs, and BAs must have available for inspection their annual training records evidencing that each system operator received 32 hours of emergency operations training.	7	7	20	140
PER–005–1, M3.1: RCs, TOs, and BAs must have available for inspection training records evidencing that each system operator received emergency training using simulation technology.	7	7	20	140
Total				2,415

• *Total Annual hours for Collection: Recordkeeping = Total Hours.*

Information Collection Costs: Recordkeeping = 2415 hours @ $120/hour [82] = $289,800.

• Total costs = $289,800.

• *Title:* Mandatory Reliability Standards for the Bulk-Power System.

• *Action:* Proposed Collection of Information.

• *OMB Control No:* 1902–0244.

• *Respondents:* Business or other for profit, and/or not for profit institutions.

• *Frequency of Responses:* On occasion.

• *Necessity of the Information:* This final rule would approve revised Reliability Standards that modify the existing requirement for entities to develop training programs and train certain personnel. The Reliability Standards require entities to maintain their training materials and training records subject to review by the Commission and NERC to ensure compliance with the Reliability Standards.

• *Internal review:* The Commission has reviewed the requirements pertaining to the Reliability Standards for the Bulk-Power System and determined that the Requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

91. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC [Attention: Ellen Brown, Office of the Executive Director, Phone: (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov*]. Comments on the requirements of this order may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference FERC–725A and the docket number of this final rule in your submission.

IV. Environmental Analysis

92. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[83] The actions taken in this Final Rule fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[84] Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act

93. The Regulatory Flexibility Act of 1980 (RFA) [85] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.,* reliability coordinators, transmission operators, and balancing authorities, to which the requirements of this rule would apply do not fall within the definition of small entities.[86] Moreover, the proposed Reliability Standards reflect a continuation of existing training requirements for transmission operators and balancing authorities and are "new" only with respect to reliability coordinators.

94. As indicated above, based on available information regarding NERC's compliance registry, approximately seven entities will be responsible for compliance with proposed Reliability Standards PER–004–2 and PER–005–1 that were not already subject to the existing Reliability Standards comprising the same base training requirements as contained in the new Reliability Standards. The Commission does not consider this a substantial number. Further, few if any of the seven reliability coordinators are small entities. Based on the foregoing, the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small

[80] The proposed Reliability Standards do not impose any reporting requirements.

[81] Only seven of the 16 registered reliability coordinators are not currently subject to training requirements as balancing authorities.

[82] This hourly rate reflects the hourly rate for engineers based on information provided to the Commission in Docket No. RM08–13. *See Transmission Relay Loadability Reliability Standard,* 130 FERC ¶ 61,221, at P 327 (2010) (Final Rule).

[83] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[84] 18 CFR 380.4(a)(5).

[85] 5 U.S.C. 601–612.

[86] The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. See 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

95. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

96. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

97. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

98. These regulations are effective January 25, 2011. The Commission notes that although the determinations made in this Final Rule are effective January 25, 2011, Reliability Standard PER–004–2 approved in this final rule will not become effective until the first day of the first calendar quarter after regulatory approval and that Reliability Standard PER–005–1 approved in this final rule will become effective on a staggered basis, as identified in Appendix B, with the earliest effective date being first day of the first calendar quarter after regulatory approval for PER–005–1, Requirement R3. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this Rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A: Commenting Party Acronyms

Abbreviation	Commenter
APPA	American Public Power Association.
Associated Electric	Associated Electric Cooperative, Inc.
BGE	Baltimore Gas and Electric Co.
BPA	Bonneville Power Administration.
Constellation	Constellation Power Source Generation, Inc., Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and Constellation Energy Nuclear Group, LLC.
Dominion	Dominion Resources Services, Inc. on behalf of its affiliates.
EEI	Edison Electric Institute.
E.ON	E.ON U.S. LLC.
EPSA	Electric Power Supply Association.
GSOC & GTC	Georgia System Operations Corp. and Georgia Transmission Corp.
IESO	Ontario Independent Electricity System.
ISO/RTO Council	ISO/RTO Council.
ITC	International Transmission Company d/b/a ITCTransmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.
KCP&L	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
MidAmerican	MidAmerican Energy Holdings Company.
Minnesota Power	Minnesota Power.
Montana-Dakota	Montana-Dakota Utilities Co.
NRECA	National Rural Electric Cooperative Assoc.
NV Energy	Nevada Power Company and Sierra Pacific Power Co.
NERC	North American Electric Reliability Corporation.
NorthWestern	NorthWestern Corp d/b/a/ NorthWestern Energy.
PG&E	Pacific Gas and Electric Co.
Platte River	Platte River Power Authority.
Portland	Portland General Electric Co.
SPP	Southwest Power Pool, Inc.
Westar	Westar Energy, Inc. and Kansas Gas and Electric Co.
WECC	Western Electricity Coordinating Council.
Wisconsin Electric	Wisconsin Electric Power Co.

Appendix B

COORDINATION OF RETIREMENT AND EFFECTIVE DATES TABLE

Existing approved standard	Requirement to be retired or replaced	Proposed standard	New requirement to be implemented	Date for concurrent retirement and implementation
PER–002–0	R1	PER–005–1	R1	1st calendar quarter 24 months after regulatory approval.
	R2		R1.1	
	R3		R1.1.1	
	R3.1		R1.2	
	R3.2		R1.3	
	R3.3		R1.4	
	R3.4		R2	

COORDINATION OF RETIREMENT AND EFFECTIVE DATES TABLE—Continued

Existing approved standard	Requirement to be retired or replaced	Proposed standard	New requirement to be implemented	Date for concurrent retirement and implementation
			R2.1	
PER–004–1	R3 R4			
PER–002–0	R4	PER–005–1	R3	1st day of 1st calendar quarter after regulatory approval.
PER–004–1	R2			
PER–004–1	R1	PER–004–2	R1	1st day of 1st calendar quarter after regulatory approval.
	R5		R2	
N/A	N/A	PER–005–1	R3.1	1st day of 1st calendar quarter 36 months after regulatory approval.

[FR Doc. 2010–29717 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Belcher Pharmaceuticals, Inc., to Belcher Pharmaceuticals, LLC. The sponsor's mailing address will also be changed.

DATES: This rule is effective November 26, 2010.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855; 240–276–8300, e-mail: *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Belcher Pharmaceuticals, Inc., 12393 Belcher Rd., suite 420, Largo, FL 33773 has informed FDA that it has changed its name and address to Belcher Pharmaceuticals, LLC, 6911 Bryan Dairy Rd., Largo, FL 33777. Accordingly, the Agency is amending the regulations in 21 CFR 510.600 to reflect this change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entry for "Belcher Pharmaceuticals, Inc."; and in the table in paragraph (c)(2), revise the entry for "062250" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Belcher Pharmaceuticals, LLC, 6911 Bryan Dairy Rd., Largo, FL 33777.	062250
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
062250	Belcher Pharmaceuticals, LLC, 6911 Bryan Dairy Rd., Largo, FL 33777.
* * * * *	

Dated: November 19, 2010.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–29693 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 285

[Docket ID: BOEM–2010–0045]

RIN 1010–AD71

Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf—Acquire a Lease Noncompetitively

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Direct Final rule.

SUMMARY: BOEMRE is revising regulations that pertain to noncompetitive acquisition of an Outer Continental Shelf (OCS) renewable energy lease. We are taking this action because the current regulations covering noncompetitive leasing of an OCS renewable energy lease and an unsolicited request for an OCS renewable energy lease are inconsistent. This rulemaking will make the two processes consistent with each other by eliminating an extra step in the noncompetitive leasing process.

DATES: *Effective Date:* This rule becomes effective on January 25, 2011 unless BOEMRE publishes a notice withdrawing this rule before that date.

Comment Due Date: Submit comments on the direct final rule by December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy Redding at (703) 787–1219.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD71 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0045, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Acquire a Lease Noncompetitively, 1010–AD71" in your comments and include your name and address.

SUPPLEMENTARY INFORMATION

Background

The regulations at 30 CFR part 285 cover renewable energy and alternative uses of existing facilities on the OCS. This direct final rule revises the regulations at §§ 285.231 and 285.232. The regulations at § 285.231 cover unsolicited requests for noncompetitive leases. The regulations at § 285.232 cover acquisition of noncompetitive leases in response to a Request for Interest (RFI) or a Call for Information and Nomination (Call). The process outlined in these two sections is currently inconsistent now for awarding of noncompetitive leases.

As currently written, § 285.231 allows for the awarding of a noncompetitive lease after BOEMRE receives an unsolicited request for a noncompetitive lease, and after BOEMRE determines that there is no competitive interest after publishing a single notice of a request for interest relating to the unsolicited request for a noncompetitive lease. As currently written, § 285.232 provides that if a respondent to an RFI or a Call submits an area of leasing interest to BOEMRE for which no other nominations are submitted, BOEMRE may offer a lease through a noncompetitive process. However, the process requires publication of a second RFI notice to confirm the absence of competition before proceeding with the noncompetitive process. We believe that this requirement for a second notice is unnecessarily redundant and at odds with the noncompetitive process prescribed for cases in which a party submits an unsolicited request for an OCS renewable energy lease, where BOEMRE is required to publish only a single notice.

To remedy this inconsistency, BOEMRE is revising § 285.231(d)(1) to say that we will publish in the **Federal Register** a notice that there is no competitive interest. We will also revise § 285.232(c) to cite § 285.231(d) through (i) instead of the current § 285.231(b) through (i).

This is a direct final rulemaking with request for comments. We have provided a 30-day comment period for this direct final rule. We believe that 30 days is sufficient time for comments because this rulemaking is noncontroversial, and the revision was recommended by the American Wind Energy Association, the Atlantic Offshore Wind Energy Consortium (established by the Secretary of the Interior), and individual coastal states. If we receive no significant adverse comment during the 30-day comment period, this rule will go into effect 30 days after the end of the comment period. However, if a significant adverse comment is received, BOEMRE will withdraw the rule by publishing a notice of withdrawal in the **Federal Register** within 30 days after the public comment period closes and will publish a notice of proposed rulemaking. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach or would be ineffective and unacceptable without a change.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule is intended to eliminate unnecessary redundancy and inefficiency.

(3) This rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department prepared a regulatory flexibility analysis for 30 CFR part 285, and concluded that the regulations will impact a substantial number of small entities but will not have a significant economic impact on the small entities in comparison to the impacts on large entities. That analysis was discussed in detail in the Notice of Proposed Rulemaking published in the **Federal Register** on July 9, 2008 (73 FR 39376).

The North American Industry Classification System (NAICS) code for the industries affected by this rule is 221119 (Other Electric Power Generation). The definition for this code is:

- "This U.S. industry comprises establishments primarily engaged in operating electric power generation facilities (except hydroelectric, fossil fuel, nuclear). These facilities convert other forms of energy, such as solar, wind, or tidal power, into electrical energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems."

It is possible that this rule could eventually affect entities that produce hydrogen and fall under NAICS Code 325120 (Industrial Gas Manufacturing). The definition for this code is:

- "This industry comprises establishments primarily engaged in manufacturing industrial organic and inorganic gases in compressed, liquid, or solid forms."

Given the original findings of the regulatory flexibility analysis done for 30 CFR part 285, as well as the minor adjustment to the renewable energy leasing process that is entailed, the revised rule will not have a significant effect on a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1–888–734–3247. You may comment to the Small Business

Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply indiscriminately to entities operating on the OCS to lease and develop renewable energy under 30 CFR part 285.

Unfunded Mandate Reform Act of 1995

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

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

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

This rulemaking contains no new reporting or recordkeeping requirements; therefore, an Office of Management and Budget (OMB) submission under the PRA (44 U.S.C. 3501 *et seq.*) is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions in this rulemaking refer to, but do not change, information collection requirements in 30 CFR part 285. The OMB approved the referenced information collection requirements under OMB Control Number 1010–0176 (expiration 3/31/2013).

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This rule meets the criteria set forth in 516 Departmental Manual 2 (Appendix 1.10) for a Departmental "Categorical Exclusion" in that this proposed rule is "* * * of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis * * * This rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a BOEMRE "Categorical Exclusion" in that its impacts are limited to administration, economic or technological effects. Further, BOEMRE has analyzed this rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. BOEMRE concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 516 Departmental Manual 2 (Appendix 2).

Data Quality Act

In developing this rule, BOEMRE did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C section 515, 114 Stat. 2763, 2763A–153–154).

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

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

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, email 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.

List of Subjects in 30 CFR Part 285

Continental shelf, Environmental protection, Public lands.

Dated: November 12, 2010.

Wilma A. Lewis,

Assistant Secretary for Land and Minerals Management.

■ For the reasons stated in the preamble, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) amends 30 CFR part 285 as follows:

PART 285—RENEWABLE ENERGY ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

■ The authority citation for part 285 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 43 U.S.C. 1337.

■ In § 285.231, revise the section heading and paragraph (d)(1) to read as follows:

§ 285.231 How will BOEMRE process my unsolicited request for a noncompetitive lease?

* * * * *

(d) * * *

(1) We will publish in the **Federal Register** a notice that there is no competitive interest; and

* * * * *

■ Amend § 285.232 by revising paragraph (c) to read as follows:

§ 285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213?

* * * * *

(c) After receiving the acquisition fee, BOEMRE will follow the process outlined in § 285.231(d) through (i).

[FR Doc. 2010–29761 Filed 11–23–10; 4:15 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 108

[Docket ID: DOD–2009–OS–0036]

RIN 0790–AI52

Health Care Eligibility Under the Secretarial Designee Program and Related Special Authorities

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule establishes policy and assigns responsibilities for health care eligibility under the Secretarial Designee Program. It also implements the requirement that the United States receive reimbursement for inpatient health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

DATES: *Effective Date:* This rule is effective December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Col Michael Skidmore, (703) 614–4157.

SUPPLEMENTARY INFORMATION: This rule establishes policy and assigns responsibilities under 10 U.S.C. 1074(c) for health care eligibility under the Secretarial Designee Program. It also implements the requirement of 10 U.S.C. 2559 that the United States receive reimbursement for inpatient health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

Comments

The Department of Defense published a proposed rule on April 9, 2010 (75 FR 18138–18142). One public comment was received that was in full support of the rule.

Other changes have been incorporated into the rule text based on additional internal coordination within the Department to provide clarity. The responsibilities of the Assistant Secretary of Defense for Health Affairs under the proposed rule moved to the Under Secretary of Defense for Personnel and Readiness.

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 108 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Sec. 202, Pub. L. 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 108 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 108 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 108 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 108 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 108

Diplomatic personnel, Health care, Military personnel.

■ Accordingly, 32 CFR part 108 is added to read as follows.

PART 108—HEALTH CARE ELIGIBILITY UNDER THE SECRETARIAL DESIGNEE PROGRAM AND RELATED SPECIAL AUTHORITIES

Sec.
108.1 Purpose.
108.2 Applicability.
108.3 Definition.
108.4 Policy.
108.5 Eligible senior officials of the U.S. Government.
108.6 Responsibilities.

Authority: 10 U.S.C. 1074(c); 10 U.S.C. 2559.

§ 108.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under 10 U.S.C. 1074(c) for health care eligibility under the Secretarial Designee Program.

(b) Implements the requirement of 10 U.S.C. 2559 that the United States receive reimbursement for inpatient

health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

§ 108.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) Does not apply to health care services provided to coalition forces in operational settings, or to allied forces in overseas training exercises and similar activities. Also, does not apply to health care services provided to foreign nationals overseas under DoD Instruction 3000.05,[1] DoD Instruction 2205.2,[2] or DoD Instruction 2310.08E.[3]

§ 108.3 Definition.

Secretarial Designee Program. The program established under section 1074(c) to create by regulation an eligibility for health care services in military medical treatment facilities (MTFs) as well as dental treatment facilities for individuals who have no such eligibility under 10 U.S.C. chapter 55.

§ 108.4 Policy.

It is DoD policy that:

(a) *General Policy.* The use of regulatory authority to establish DoD health care eligibility for individuals without a specific statutory entitlement or eligibility shall be used very sparingly, and only when it serves a compelling DoD mission interest. When used, it shall be on a reimbursable basis, unless non-reimbursable care is authorized by this part or reimbursement is waived by the Under Secretary of Defense (Personnel & Readiness) (USD(P&R)) or the Secretaries of the Military Departments when they are the approving authority.

(b) *Foreign Military Personnel and Their Dependents.* (1) *MTF Care in the United States.* Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are eligible for space-available care as provided in DoD Instruction 1000.13.[4] Consistent with 10 U.S.C. 2559, in cases in which reimbursement is required by DoD Instruction 1000.13, a RHCA may provide a waiver of reimbursement for inpatient and/or outpatient care in the United States in a military medical treatment facility for military personnel from a foreign country and their dependents, if comparable care is made available to at least a comparable number of U.S. military personnel and their dependents in that foreign country. A disparity of 25 percent or less in the number of foreign personnel and dependents above U.S. personnel and dependents shall be considered within the range of comparable numbers.

(2) *Non-MTF Care in the United States.* Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are not eligible for DoD payment for outpatient or inpatient care received from non-DoD providers, except for such personnel covered by the North Atlantic Treaty Organization Status of Forces Agreement (SOFA) or the Partnership for Peace SOFA and authorized care under the TRICARE Standard program according to § 199.3 of title 32, Code of Federal Regulations, outpatient care may be provided as specified therein.

(c) *Foreign Diplomatic or Other Senior Foreign Officials.* Foreign diplomatic or other senior foreign officials and the dependents of such officials may be provided inpatient or outpatient services in MTFs only in compelling circumstances, including both medical circumstances and mission interests, and through case-by-case approval.

(1) In the United States, the approval authority is the USD(P&R). The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis.

(3) Under 10 U.S.C. 2559, reimbursement to the United States for care provided in the United States on an inpatient basis to foreign diplomatic personnel or their dependents is required.

(d) *Other Foreign Nationals.* Other foreign nationals (other than those described in paragraphs (b) and (c) of this section) may be designated as eligible for space-available care in MTFs only in extraordinary circumstances.

(1) The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority. Waiver requests will only be considered based on a direct and compelling relationship to a priority DoD mission objective.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis. Such requests must be supported by the U.S. Ambassador to the country involved and the Geographical Combatant Commander for that area of responsibility and must be premised on critically important interests of the United States.

(e) *Invited Persons Accompanying the Overseas Force.* The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space-available care from the Military Health System outside the United States those persons invited by the Department of Defense to accompany or visit the military force in overseas locations or invited to participate in DoD-sponsored morale, welfare, and recreation activities. This authority is limited to health care needs arising in the course of the invited activities. Separate approval is needed to continue health care initiated under this paragraph in MTFs in the United States.

(1) In the case of employees or affiliates of news organizations, all care provided under the authority of introductory paragraph (e) of this section is reimbursable. For other individuals designated as eligible under this paragraph (e), the designation may provide, to the extent allowed by law, for outpatient care on a non-reimbursable basis, and establish a case-by-case authority for waiver of reimbursement for inpatient care.

(2) This paragraph (e) does not apply to employees of the Executive Branch of the United States or personnel affiliated with contractors of the United States.

(f) *U.S. Nationals Overseas.* Health care for U.S. nationals overseas is not

[1] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf.*

[2] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/220502p.pdf.*

[3] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/231008p.pdf.*

[4] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf.*

authorized, except as otherwise provided in this part.

(g) *U.S. Government Civilian Employees and Contractor Personnel.* (1) Civilian employees of the Department of Defense and other government agencies, and employees of DoD contractors, and the dependents of such personnel are eligible for MTF care to the extent provided in DoD Instruction 1000.13.

(2) Occupational health care services provided to DoD employees under 5 U.S.C. 7901, authorities cited in DoD Instruction 6055.1,[5] or under other authorities except 10 U.S.C. 1074(c) are not affected by this Instruction. The Secretaries of the Military Departments and the USD(P&R) may designate DoD civilian employees, applicants for employment, and personnel performing services for the Department of Defense under Federal contracts as eligible for occupational health care services required by the Department of Defense as a condition of employment or involvement in any particular assignment, duty, or undertaking.

(3) Any health care services provided by the Military Health System to employees of DoD non-appropriated fund instrumentalities shall be on a reimbursable basis.

(4) In the case of DoD civilian employees forward deployed in support of U.S. military personnel engaged in hostilities, eligibility for MTF care (in addition to all eligibility for programs administered by the Department of Labor Office of Workers' Compensation Programs (OWCP)) is as follows:

(i) Consistent with Policy Guidance for Provision of Medical Care to DoD Civilian Employees Injured or Wounded While Forward Deployed in Support of Hostilities,[6] DoD civilian employees who become ill, contract diseases, or are injured or wounded while so deployed are eligible for medical evacuation or health care treatment and services in MTFs at the same level and scope provided to military personnel, all on a non-reimbursable basis, until returned to the United States.

(ii) DoD civilian employees who, subsequent to such deployment, and have been determined to have OWCP-compensable conditions are eligible for MTF care for such conditions, all on a non-reimbursable basis.

(iii) USD(P&R) may, under compelling circumstances, approve additional eligibility for care in MTFs for other U.S. Government civilian employees who become ill or injured while so deployed, or other DoD civilian employees overseas.

(5) *Contractor Personnel Authorized to Accompany U.S. Armed Forces.* In the case of contractor personnel authorized to accompany U.S. Armed Forces in deployed settings under DoD Instruction 3020.41,[7] MTF care may be provided as stated in DoD Instruction 3020.41.

(h) *Emergency Health Care.* The Secretaries of the Military Departments and the USD(P&R) may designate emergency patients as eligible for emergency health care from MTFs in the United States pursuant to arrangements with local health authorities or in other appropriate circumstances. Such care shall be on a reimbursable basis, unless waived by the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(i) *Research Subject Volunteers.* Research subjects are eligible for health care services from MTFs to the extent DoD Components are required by DoD Directive 3216.02[8] to establish procedures to protect subjects from medical expenses that are a direct result of participation in the research. Such care is on a non-reimbursable basis and limited to research injuries (unless the volunteer is otherwise an eligible health care beneficiary). Care is authorized during the pendency of the volunteer's involvement in the research, and may be extended further upon the approval of the USD(P&R).

(j) *Continuity of Care Extensions of Eligibility.* The Secretaries of the Military Departments and the USD(P&R) may establish temporary eligibility on a space-available basis for former members and former dependents of members of the seven Uniformed Services for a limited period of time, not to exceed 6 months, or in the case of pregnancy the completion of the pregnancy, after statutory eligibility expires when appropriate to allow completion or appropriate transition of a course of treatment begun prior to such expiration. In the case of a pregnancy covered by this paragraph, the designation of eligibility may include initial health care for the newborn infant. Care under this paragraph is authorized on a non-reimbursable basis for the former member or former dependent of member. Care under this paragraph for the newborn of those former members or former dependents is authorized but on a full reimbursable basis unless the Secretary of the Military Department elect to use Secretarial Designee status for the newborn.

(k) *Members of the Armed Forces.* The Secretaries of the Military Departments and the USD(P&R) may establish eligibility not specifically provided by statute for critical mission-related health care services for designated members of the Armed Forces, such as Reserve Component members not in a present duty status. This authority includes payment for health care services in private facilities to the extent authorized by 10 U.S.C. 1074(c). Care under this paragraph is non-reimbursable.

(l) *Certain Senior Officials of the U.S. Government.* The officials and others listed in § 108.5 of this part are designated as eligible for space-available inpatient and outpatient health care services from the Military Health System on a reimbursable basis.

(m) *Nonmedical Attendants.* The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space available MTF care persons designated as nonmedical attendants as defined by 37 U.S.C. 411k(b). Costs of medical care rendered are reimbursable unless reimbursement is waived by the Secretary of the Military Department concerned or USD(P&R). This authority is limited to health care needs arising while designated as a nonmedical attendant.

(n) *Patient Movement.* Provisions of this Instruction concerning inpatient care shall also apply to requests for patient movement through the medical evacuation system under DoD Instruction 6000.11.[9] Aeromedical evacuation transportation assets are reserved for those individuals designated as Secretarial Designees who need transportation to attain necessary health care.

(o) *Other Individuals Entitled to DoD Identification (ID) Card.* Other individuals entitled to a DoD ID card under DoD Instruction 1000.13 are eligible for space-available MTF health care to the extent provided in DoD Instruction 1000.13.

(p) *Reciprocity Among Military Departments.* Subject to the capabilities of the professional staff, the availability of space and facilities, and any other limitation imposed by the approving authority, all Services will provide medical treatment to individuals who have been granted Secretarial designee

[5] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/605501p.pdf.*

[6] Copies available at OASD (Health Affairs/TMA FHP&RP), 1200 Defense Pentagon, Room 3E1073, Washington, DC 20301–1200.

[7] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf.*

[8] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/321602p.pdf.*

[9] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf.*

status by any of the Secretaries of the Military Departments. Each agreement must identify the specific MTF or geographical region in which medical care is requested, requiring close coordination among service program managers.

§ 108.5 Eligible senior officials of the U.S. government.

(a) The following individuals are Secretarial Designees for space-available care in MTFs on a reimbursable basis, unless specified otherwise by a Service Secretary:

(1) The President and Vice President, and their spouses and minor children.

(2) Members of Congress.

(3) Members of the Cabinet.

(4) Officials of the Department of Defense appointed by the President and confirmed by the Senate.

(5) Article III Federal Judges. (Article III courts are: The Supreme Court of the United States, U.S. Courts of Appeal, U.S. District Courts, U.S. Court of International Trade, United States Foreign Intelligence Surveillance Court, United States Foreign Intelligence Surveillance Court of Review.)

(6) Judges of the U.S. Court of Appeals for the Armed Forces.

(7) Assistants to the President.

(8) Director of the White House Military Office.

(9) Former Presidents of the United States and their spouses, widows, and minor children.

(b) [Reserved].

§ 108.6 Responsibilities.

(a) The USD(P&R) shall:

(1) Evaluate requests for and where appropriate, grant exceptions to policy established by this part and DoD Directive 5124.02,[10] including waiver of reimbursement, to the extent allowed by law.

(2) Following approval of the USD(P) and in coordination with USD(P) and the GC, DoD, and in accordance with DoD Directive 5530.3,[11] begin negotiations, negotiate, and have the authority to sign RHCAs.

(b) The USD(P) shall evaluate requests and determine DoD mission interest for Secretarial Designee Status and RHCAs to identify those agreements that would be in the best interest of the Department of Defense and approve negotiations of RHCAs by the USD(P&R).

(c) The USD(C) shall in coordination with USD(P&R), establish appropriate reimbursement rates, including appropriate interagency rates and rates applicable to students in International Military Education and Training programs.

(d) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall evaluate requests for Exception to the Transportation Policy. The authority to grant such a exception is by USD(P&R) or the Secretary of the Military Department concerned.

(e) The Secretaries of the Military Departments shall:

(1) Issue, revise or modify as appropriate, regulations to comply with this part.

(2) Appoint a Military Department representative who will administer the Secretarial Designee Program within the Military Department and coordinate with other DoD Components in its effective operation.

(3) Where and when appropriate, the Military Department concerned shall coordinate with U.S. Transportation Command/Global Patient Movement Requirements Center.

(4) Identify Secretarial Designees treated at MTFs.

(5) Provide an annual consolidated list reflecting the number of Secretarial Designees within their departments, reasons for such designation, location where designee is receiving treatment, the costs and sources of funding, nature and duration of treatment and expiration date of designee status to USD(P&R) and USD(C). The annual report is due 30 days after the start of the fiscal year reflecting the prior fiscal year's information.

(i) In cases where the USD(P&R) designates an individual as a Secretarial Designee, the Military Department concerned shall include this individual on any lists provided to USD(P&R) and USD(C) for reporting purposes.

(ii) Annually consolidate Secretarial Designee patient costs and forward those data to USD(P&R) and OSD(C), along with a report of collection for reimbursable costs.

(f) The Commanders of the Geographic Combatant Commands (GCCs) shall:

(1) Refer requests to waive reimbursement through the Chairman of the Joint Chiefs of Staff to the USD(P&R).

(2) Refer requests for Secretarial Designee status for medical care in the United States through the Chairman of the Joint Chiefs of Staff to USD(P&R).

(3) Through the Chairman of the Joint Chiefs of Staff, provide written annual reports to the USD(P&R) and USD(C) reflecting the number of individuals designated as Secretarial Designees within their geographic area of responsibility, the reasons for such designation, the expected duration of such designation, the costs and sources of funding authorizing the support of such designee status for each designee.

(4) Identify Secretarial Designees treated at MTFs within their geographic area of responsibility.

(5) Provide for an accounting and collection system for reimbursement of medical costs within their geographic area of responsibility.

(g) The Commander, United States Transportation Command shall:

(1) Coordinate patient movement with all concerned Military Departments.

(2) Upon request of the Military Department concerned or Commanders of the GCCs, determine availability of DoD transportation assets, or when cost effective, coordinate with civilian ambulance authorities, to effect transportation of Secretarial Designee as appropriate.

(3) Ensure the Global Patient Movement Requirements Center, as the regulating agency, will consistently serve as the single point of contact for patient movement for Secretarial Designee patients using DoD assets upon request.

(4) Annually consolidate Secretarial Designee patient listing who utilized the DoD patient movement system and forward to USD(P&R) and USD(C).

Dated: November 15, 2010.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2010–29763 Filed 11–24–10; 8:45 am]

BILLING CODE 5001–06–P

[10] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf.*

[11] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/553003p.pdf.*

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 ANTIETAM (CG 54) 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 26, 2010 and is applicable beginning November 17, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, 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 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 ANTIETAM (CG 54) 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(a), pertaining to the horizontal distance between the forward and after masthead lights. 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 Five, by revising, in alpha numerical order, by vessel number, an entry for USS ANTIETAM (CG 54):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS ANTIETAM	CG 54		X	X	36.8
* *	*	*	*	*	*

* * * * *

Approved: November 17, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: November 18, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–29771 Filed 11–24–10; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Open and Distribute and Priority Mail Open and Distribute

AGENCY: Postal Service.™

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 705.16 to require the use of a single-ply address label containing a service barcode with unique Service Type Code "723" or a "DB" prefix along with new Tag 257, Tag 267, or Label 257S, on all Express Mail® Open and Distribute containers. The Postal Service is also revising the service commitment for Express Mail Open and Distribute as a guaranteed end of day product; and adding a five-pound minimum weight requirement for Express Mail Open and Distribute and Priority Mail® Open and Distribute sacks.

DATES: *Effective Date:* January 2, 2011.

FOR FURTHER INFORMATION CONTACT: Jewelyn Harrington at 202–268–7648 or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION: On September 17, 2010, the Postal Service published a proposed rule in the **Federal Register** (75 FR 56920–56922) to change the standards for Express Mail Open and Distribute. After reviewing the comments, and upon further consideration of the proposed revisions, the Postal Service has decided to adopt the proposed regulations with a minor revision.

Comments

The Postal Service received three comments and a request for clarification:

1. All three comments raised concerns about the five-pound minimum weight limit for Express Mail Open and Distribute and Priority Mail Open and Distribute sacks. As a result, the Postal Service is making a minor revision to allow an Open and Distribute sack to be less than 5 pounds if the sack contains mail in a qualifying tray.

2. One commenter also requested a clarification of the end of day service commitment for Express Mail Open and

Distribute shipments. The end of day (11:59 p.m.) service commitment guarantees delivery of the Express Mail Open and Distribute container to the designated entry Postal facility. Upon entry, the enclosed mail is processed for delivery according to the service standards for the product.

Summary

Express Mail

The Postal Service is requiring mailers to place a single-ply address label with a service barcode on all Express Mail Open and Distribute containers and to submit an electronic file. The service barcode is required to be a USS 128 or Code 39 barcode with a "DB" prefix, or Intelligent Mail package barcode (eVS® approved mailers) symbology with a unique Service Type Code (STC) "723". The text, "USPS SCAN ON ARRIVAL," must appear above the barcode. This requirement is in accordance with instructions for barcode specifications, electronic file format and testing, and the certification process in Publication 91, *Confirmation Services Technical Guide.*

The Postal Service is also replacing Tag 157 with Tag 257 (DDU), Tag 267 (SCF, NDC), and Label 257S (DDU) for all Express Mail Open and Distribute containers.

In addition, the Postal Service revises the service commitment to end of day (11:59 p.m.) for Express Mail Open and Distribute shipments.

Express Mail and Priority Mail

The Postal Service is establishing a five-pound minimum weight requirement for all Express Mail Open and Distribute and Priority Mail Open and Distribute sacks, except for sacks containing qualified trays (trays prepared under the standards for the applicable class of mail).

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

16.1 Prices and Fees

16.1.1 Basis of Price

[Revise 16.1.1 as follows:]

Mailers must pay Express Mail and Priority Mail postage based on the weight of the contents of the Open and Distribute shipment. Do not include the tare weight of the external container. Do not apply Priority Mail dimensional weight pricing or Periodicals container prices to the external container. The minimum weight requirement for Open and Distribute sacks is five pounds, except for Open and Distribute sacks that contain qualified trays (trays prepared under the standards for the applicable class of mail). The maximum weight for each container is 70 pounds.

16.1.2 Zone Prices

[Revise 16.1.2 as follows:]

Compute zone prices, for the applicable class of mail, from the accepting Post Office to the destination facility for the container (not the destination Post Office for the enclosed mail).

* * * * *

16.1.5 Payment Method

[Revise the text in 16.1.5 as follows:]

Postage payment methods are as follows:

a. Postage on the enclosed mail may be paid by any method permitted for that mail class, except for ordinary postage stamps requiring cancellation.

b. Express Mail postage may be paid under any of the options listed in 414.1.1, except Click-N-Ship. Express Mail postage must be affixed to blue Tag 257, to yellow Tag 267, to the Open and Distribute tray box, or be part of the address label.

c. Priority Mail postage may be paid under 424.1.1. Priority Mail postage must be affixed to or hand-stamped on green Tag 161, pink Tag 190, the Open and Distribute tray box, or be part of the address label.

* * * * *

16.2 Basic Standards

* * * * *

16.2.2 Content Standards

[Revise the DMM reference numbers in the parentheses at the end of the first sentence of 16.2.2 as follows:]

* * * (*see* 410 for Express Mail standards and 420 for Priority Mail standards).* * *

[Revise the last sentence of 16.2.2 as follows:]

* * * Mailers are not required to place bundles of mail in sacks or trays when all of the mail enclosed in an Open and Distribute sack is destined to a 5-digit facility and the Open and Distribute sack weighs at least five pounds.

16.3 Additional Standards for Express Mail Open and Distribute

16.3.1 Service Objectives

[Revise the first sentence in 16.3.1 as follows:]

The Express Mail service guarantee for Express Mail Open and Distribute is receipt by end of day (11:59 p.m.) and ends upon receipt by scan of the Express Mail Open and Distribute container at the destination postal facility. * * *

* * * * *

16.5 Preparation

16.5.1 Containers for Expedited Transport

Acceptable containers for expedited transportation are as follows:

[Revise item 16.5.1a to reflect new tags as follows:]

a. An Express Mail Open and Distribute shipment must be contained in a USPS-approved sack using Tag 257 or Tag 267 or in a USPS-provided Express Mail Open and Distribute tray box (Tag 257 and Tag 267 are not required for tray boxes; only the 4x6 address label should be applied), except as provided in 16.5.1c and 16.5.1d.

* * * * *

[Revise item 16.5.1c to reflect new labels as follows:]

c. An Express Mail or Priority Mail Open and Distribute shipment destined to a DDU may be contained in a USPS-provided Express Mail Flat Rate Envelope using Label 257S or Priority Mail Flat Rate Envelope and boxes using Label 190S.

* * * * *

[Revise the heading of 16.5.2 as follows:]

16.5.2 Express Mail and Priority Mail Sack Labels

[Revise the text in 16.5.2 as follows:]

Labels for Express Mail or Priority Mail sacks containing Open and Distribute shipments must be barcoded and meet the requirements in 708.6.0. All lines of information must be completely visible when inserted into the label holder. Label sacks as follows:

a. Line 1 (destination line) provides information on the destination entry office where the enclosed mail is to be distributed.

1. For destination delivery unit (DDU) distribution, use the facility name and ZIP Code found in the Drop Shipment Address File available at the USPS FAST Web site at *https://fast.usps.com* (click Resources in the left-hand navigation bar, then "Go" for "Drop Ship Product File Download").

2. For SCF distribution, use the destination in L005, Column B.

3. For ADC distribution, use the destination in L004, Column B (Priority Mail Open and Distribute Only).

4. For NDC distribution, use the destination in L601, Column B.

5. For ASF distribution, use L602, Column B (Priority Mail Open and Distribute Only).

b. For Line 2 (content line), print "EXPRESS MAIL OPEN AND DIST" or "PRIORITY MAIL OPEN AND DIST," as applicable.

c. For Line 3 (origin line), show the city and state of the entry Post Office or the mailer's name and the city and state of the mailer's location. It is recommended that the mailer's name also appear with the city and state of the entry Post Office. See 708.6.2.5 for additional standards.

[Revise the tag numbers in the heading of 16.5.3 as follows:]

16.5.3 Tags 257 and 267—Express Mail Open and Distribute

[Revise the text in 16.5.3 as follows:]

Tag 257 and Tag 267 provide a place to affix Express Mail postage and the address label for the destination facility. Tag 257 or Tag 267 must be attached to each Express Mail sack, in addition to the Express Mail sack label, to identify it as an Express Mail Open and Distribute shipment as follows:

a. Attach Tag 267 to sacks used as Express Mail Open and Distribute containers destined to a NDC or SCF facility.

b. Attach Tag 257 to sacks used as Express Mail Open and Distribute containers destined to a DDU. Label 257S may be affixed to containers used for Express Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

* * * Tag 161 or Tag 190 must be attached to each Priority Mail sack, in addition to the Priority Mail sack label, or container to identify it as a Priority Mail Open and Distribute shipment as follows:

* * * * *

[Revise the last sentence in item 16.5.4b as follows:]

b. * * * Label 190S may be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

* * * * *

16.5.6 Address Labels

[Revise the first sentence in 16.5.6 as follows:]

In addition to Tag 257, Tag 267, Tag 161, or Tag 190, USPS-provided containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states "OPEN AND DISTRIBUTE AT:" followed by the facility name.* * *

16.5.7 Address Label Service Barcode Requirement

[Revise the introductory text of 16.5.7 as follows:]

An electronic service barcode using the USS 128, USS 39, or Intelligent Mail package barcode (IMpb) (eVS approved mailers) symbology for Express Mail Open and Distribute, and the concatenated GS1–128 or IMpb symbology for Priority Mail Open and Distribute, must be incorporated in the address label. Mailers must prepare address labels using the formats in 16.5.8 through 16.5.12. The labels must include either a service type code "723" with an IMpb or "DB" prefix with a USS 128 or USS 39 barcode for Express Mail Open and Distribute or service type code "55" with a concatenated GS1–128 barcode or "123" with an IMpb for Priority Mail Open and Distribute, to identify the service. The human-readable text "USPS SCAN ON ARRIVAL" must appear above the barcode. USPS certification is required from the National Customer Support Center (NCSC) for each printer used to print barcoded open and distribute address labels, except for barcodes created using USPS Shipping Assistant. NCSC contact information, formatting specifications for barcodes and electronic files, and certification, are included in Publication 91, *Confirmation Services Technical Guide.* Mailers can use the following options available to create a label with a service barcode for Express Mail Open and Distribute and Priority Mail Open and Distribute address labels:

* * * * *

16.5.9 SCF Address Labels

* * * * *

Exhibit 16.5.9 SCF Address Label

[Replace Exhibit 16.5.9 with an Express Mail Open and Distribute SCF label.]

* * * * *

16.5.11 NDC Address Labels

* * * * *

Exhibit 16.5.11 NDC Address Label

[Replace Exhibit 16.5.11 with an Express Mail Open and Distribute NDC label.]

* * * * *

16.6 Enter and Deposit

* * * * *

16.6.2 Entry

[Revise the first sentence of 16.6.2 as follows:]

A PS Form 3152, *Confirmation Services Certification,* (Priority Mail Open and Distribute) or PS Form 3152–E (Express Mail Open and Distribute) must accompany each Open and Distribute shipment. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–29801 Filed 11–24–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0656; FRL–9230–3]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Mexico

for the purpose of addressing the "good neighbor" provisions of the Clean Air Act (Act or CAA) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standards) and the 1997 $PM_{2.5}$ NAAQS. This SIP revision addresses the requirement that New Mexico's SIP has adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is approving the New Mexico Interstate Transport SIP provisions that address the requirement of CAA section 110 (a)(2)(D)(i)(I) that emissions from New Mexico sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state. In addition, EPA is approving the provisions of this SIP submission that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from the State's sources do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent "significant deterioration of air quality." For purposes of the 8-hour ozone NAAQS, EPA is also approving a SIP revision that modifies New Mexico's Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include nitrogen oxides (NO_X) as an ozone precursor. This action is being taken under section 110 and part C of the Act.

DATES: This final rule will be effective December 27, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2009–0656. All documents in the docket are listed at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (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 or Mr. Bill Deese at 214–665–7253 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: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number (214) 665–7263; e-mail address *shahin.emad@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

I. What action is EPA taking?
II. What is the background for this action?
III. What comments did EPA receive and how has EPA responded to them?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

We are approving a submission from the State of New Mexico demonstrating that New Mexico has adequately addressed two of the required elements of the CAA section 110(a)(2)(D)(i), the element that prohibits air pollutant emissions from sources within a state from interfering with the maintenance of the relevant NAAQS in any other state, and the element that prohibits those pollutants from interfering with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality.

We have determined that emissions from sources in New Mexico do not interfere with the maintenance of the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS or with measures required to prevent significant deterioration of air quality with regards to these ozone or $PM_{2.5}$ NAAQS in any other state. Because we have determined that emissions from New Mexico sources do not interfere with maintenance of these NAAQS, or interfere with measures required to prevent significant deterioration of air quality in any other state, sections 110(a)(2)(D)(i)(I) and (II) do not require any substantive changes to New Mexico's SIP for these purposes. EPA published a prior final rule (75 FR 33174) on June 11, 2010 approving the New Mexico SIP submission for the "significant contribution to nonattainment" prong of section 110(a)(2)(D)(i). The remaining element of section 110(a)(2)(D)(i), which pertains to interference with measures required to protect visibility in any other state, will be addressed in a future rulemaking.

In conjunction with our finding that emissions from sources in New Mexico are not interfering with any other state's PSD program, we are also approving New Mexico's submitted rule revisions to regulate NO_X emissions as a precursor to ozone in its PSD permit program. EPA intends to act on the other revisions submitted together with the PSD program revisions at a later time.

II. What is the background for this action?

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the 1997 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 $PM_{2.5}$ NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air

quality in other states; or (4) interfere with efforts to protect visibility in other states.

On September 17, 2007, EPA received a SIP revision from the State of New Mexico intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. On June 11, 2010, EPA found that emissions from New Mexico do not contribute significantly to nonattainment of the NAAQS in other states (75 FR 33174). In this rulemaking, EPA is addressing the requirements that pertain to preventing sources in New Mexico from emitting pollutants that will interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in other states, or that will interfere with measures required to prevent significant deterioration of air quality in other states with respect to these NAAQS. In its submission, the State of New Mexico demonstrated that its current SIP is adequate to prevent such interference, and thus argued that no additional emissions controls are necessary at this time to alleviate interstate transport for the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS. With the submission, the State meets the second and third elements of section 110(a)(2)(D)(i). On August 27, 2010, we published a proposed rule to approve the portion of New Mexico's SIP submission that addressed the two elements that pertain to prohibiting air pollutant emissions from within New Mexico from interfering with maintenance of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS or with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality in any other state (75 FR 52692). We simultaneously proposed to approve New Mexico's September 21, 2009 submittal that adds NO_X as an ozone precursor in its PSD rules. For EPA's full analysis on the approvability of these SIP submittals, please see that proposal. EPA received adverse comments regarding the "interfere with maintenance" element during the comment period, and accordingly EPA is responding to those comments in today's final action.

III. What comments did EPA receive and how has EPA responded to them?

EPA received one comment letter on the August 27, 2010 proposed rule. The letter can be found on the internet in the electronic docket for this action. To access the letters, please go to *http://www.regulations.gov* and search for Docket No. EPA–R06–OAR–2007–0993, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. The discussion below addresses those comments and our response.

Comments from WildEarth Guardians.

Comment No. 1—The commenter stated that EPA inappropriately defined the term "interfere with maintenance." It argued that EPA's definition appeared to be "inappropriately conflated with the definition of nonattainment." It argued that the definition of maintenance appeared to be tied to nonattainment, asserting that "unless an area has violated or is in violation of the NAAQS, the agency will not consider whether New Mexico is interfering with that area's ability to maintain compliance with the NAAQS." For this reason, it argued EPA did not give independent meaning to the "interfere with maintenance" prong of section 110(a)(2)(D)(i)(I).

EPA Response: The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the DC Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008).[1] In that case, the court analyzed the definition of "interfere with maintenance" used in the Clean Air Interstate Rule (CAIR). The court found that the definition EPA used "gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance." *Id.* at 910. It further reasoned that "[u]nder EPA's reading of the statute, a state can never 'interfere with maintenance' " unless EPA determines that at one point it "contribute[d] significantly to nonattainment." *Id.* at 910. Based on this analysis, the court found the definition unlawful holding that "[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the 'interfere with maintenance' language to identify upwind states that interfere with downwind maintenance, EPA unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference in 2010." *Id.* at 910–911.

The approach used by EPA to evaluate New Mexico's SIP submission and to determine whether emissions from sources in New Mexico interfere with maintenance in any other state directly addresses these flaws. It gives significant independent meaning to the term "interfere with maintenance." It establishes a process to identify any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. These receptors are referred to as maintenance receptors.

The methodology EPA used to identify maintenance receptors gives independent meaning to the term "interfere with maintenance" and establishes a process to identify projected attainment receptors that, based on the historic variability of air quality at that site (which may be due to variability in emissions and/or meteorology), may have difficulty maintaining the standard. As explained in greater detail below, the commenter's objection to EPA's approach appears to be based on the misconception that the methodology EPA used to identify maintenance sites was dependent on base year NAAQS violations.

The commenter's statement that EPA's designation of maintenance receptors is "firmly hitched to a finding that the maximum design value based on a single three-year period between 2003 and 2007 is in excess of the NAAQS" appears to be based on a misunderstanding of the methodology used by EPA to identify maintenance receptors. EPA's methodology did not, as the commenter appears to assume, require a site to have a design value above the NAAQS for one of the three base periods (2003–2005, 2004–2006, 2005-2007) to be considered a maintenance site. The methodology is based on an analysis of the future year average and future year maximum design values. It does not depend on whether the base year design values exceed the NAAQS. In the proposal, EPA explained that "EPA identified those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a single three-year period) that exceeds the NAAQS, as maintenance sites." (75 FR 52697). The maximum design value referenced in this sentence is the maximum *future* design value calculated using each of the three base design value periods separately. Whether or not one of the three base

[1] As EPA noted in the proposal, the term "interfere with maintenance" is not defined in the CAA. As such, the term is ambiguous and EPA's interpretation of that term in this action is both reasonable and consistent with the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts of this action.

period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

To better understand this concept, it is useful to compare the methodologies used in the Transport Rule (TR) proposal (75 FR 45210 (August 2, 2010)) to identify nonattainment and maintenance receptors. In the TR proposal, base period (2003–2007) ambient data were projected to the future (using model outputs), to identify both nonattainment and maintenance receptors. In both cases, receptors were identified by projected future design values; however, because more conservative data were used for the maintenance analysis, this analysis could identify receptors that were projected by the nonattainment analysis to be in attainment, yet might have difficulty attaining the standard due to historic variability of air quality at that site. To identify future nonattainment sites EPA calculated the future year design values by projecting the 5-year weighted average design value for each site. Only if this future year design value exceeded the NAAQS was the site considered to be a nonattainment receptor. However, to identify projected maintenance sites EPA used a different methodology that took into account historic variability in air quality at each receptor. For this approach EPA calculated the maximum future year design value by processing each of the three base design value periods (2003–2005, 2004–2006, and 2005–2007) separately. The highest of the three future values is the maximum design value, which is used to determine maintenance receptors.

In this way, EPA's analysis identifies those areas that are projected to be in attainment, but may have difficulty maintaining attainment of the standard, for example in a year with particularly severe meteorology (weather that is conducive to ozone and/or particulate formation). In other words, this analysis does exactly what the DC Circuit directed EPA to do in *North Carolina,* 531 F.3d 896. It gave independent meaning to the "interfere with maintenance" prong of 110(a)(2)(D) and is providing protection to any areas that, although they are predicted to attain the standard (and thus upwind sources could not be found to significantly contribute to nonattainment in that area) may have difficulty maintaining the standard. *Id.* at 911.

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating New Mexico's SIP submission. For the reasons explained above, this approach is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina,* 531 F.3d 896.

Comment No. 2—The commenter cited a variety of information suggesting that receptors in the Denver/North Front Range (Denver/NFR) area should also be considered for maintenance purposes under 110(a)(2)(D)(i) in this action. The commenter points out that as EPA itself has stated that "Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of {0.085} and 0.086 ppm, respectively)." The commenter also argued that modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration shows that by 2010, the three-year design value is only projected to be lowered to 0.084 parts per million, barely in compliance with the NAAQS, and that certain portions of the Denver/NFR area of Colorado would violate the 1997 ozone NAAQS in 2010 at grid cells west of Fort Collins. The commenter referenced several documents that are part of the Colorado's Denver/NFR 8-hour Ozone Attainment Demonstration in support of its arguments. The commenter cited the report's language that indicated that the modeling projection of a value above the 1997 8-hour standard to the west of Fort Collins is not "implausible" explaining, "In the case of the Denver ozone modeling, higher ozone concentrations are estimated west of Fort Collins than at the locations of the two monitors in Fort Collins on some days and this does not appear to be an error in the modeling system".[2]

The commenter argued that EPA's failure to consider the Denver/NFR area as a receptor for evaluating interference with maintenance in this action reflects the very problem that the DC Circuit warned could result without giving independent meaning to the term "interfere with maintenance." The commenter asserted that EPA's own modeling (CENRAP modeling with 2002 emission inventory) indicated that sources in New Mexico contribute more than 2 parts per billion (up to 5% of Denver/NFR area's total concentrations) of ozone on days when exceedances of the 1997 8-hour standard are projected in Denver/NFR.[3] The commenter stated that EPA has rejected this modeling information because it used outdated emission data without any indication that it is invalid or fails to indicate that sources within New Mexico may interfere with maintenance in Colorado.[4]

EPA's Response—EPA disagrees with the commenter's argument that EPA has inappropriately identified the correct monitors for maintenance receptors. As discussed in greater detail in the previous response to comment, EPA has selected a method that identifies maintenance receptors separately from nonattainment receptors and gives an independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i). EPA has consistently applied this method to all potential receptors in States potentially impacted by New Mexico's emissions including those in the Denver/NFR area.

The commenter's argument EPA did not consistently identify maintenance receptors is premised on the same fundamental misunderstanding discussed in response to comment #1—that EPA's identification of nonattainment receptors was based on current or past NAAQS violations. As explained above, this is not correct. EPA did not base its identification of maintenance receptors on an analysis of whether air quality at those receptors exceeded the NAAQS in the base years. The methodology EPA used to identify maintenance areas takes into account historic variability of emissions at specific monitoring sites to analyze whether or not monitoring sites projected to be in attainment in 2012 will nonetheless remain at risk of slipping into nonattainment in that year. The commenter provided a number of modeling or monitoring analyses for 2010 or earlier. As we have addressed in responses elsewhere in this notice, EPA continues to believe 2012 is the appropriate year for this analysis. Thus, modeling or monitoring data for other years is not directly relevant to this rulemaking. Nonetheless, below we address the commenter's specific assertions about the modeling.

The commenter asserts that monitoring data for 2005–07 and 2006–08 for the Rocky Flats North monitor reflect violations of the 8-hour NAAQS and therefore EPA should consider this Rocky Flats North monitor as a "maintenance receptor." The commenter further cites modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration to support its assertion that EPA has

[2] Commenter referenced the Colorado Department of Public Health and Environment's "2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan Control Strategy" and the Environ modeling report "Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan."

[3] EPA Source Apportionment Modeling using a version of the CENRAP modeling database with a 2002 Emission Inventory.

[4] Commenter referenced 75 FR pages 33182–33183.

applied inconsistently its definition of interference with maintenance. The modeling data referenced by the commenter, however, only identifies monitors that, in the commenter's view, are at risk of being in nonattainment or having maintenance problems in 2010. The monitoring data cited indicates high ozone levels in the past. The underlying issue raised is thus substantively the same as that raised in comment no. 3 below which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present or in the past. EPA's response to comment no. 3 below, illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the DC Circuit decision in *North Carolina* v. *EPA.*

EPA's method is based on model projection values that take into account multi-year variability in ozone data at specific monitors. For identification of maintenance receptors, EPA utilized the monitoring data from the 2003–2007 period to calculate 2012 future year modeling design value projections. The 2003–07 period includes three Design Value (DV) periods (2003–2005, 2004–2006, and 2005–2007). The 2012 future year DVs were calculated by multiplying a 3-year DV (base year) by the ratio of the Future Year average of the daily 8-hour ozone maximums around a monitor over the Base Year average of the daily 8-hour ozone maximums around a monitor. This calculation was performed for each of the three 3-year DVs (2003–2005, 2004–2006, and 2005–2007). This approach yielded three different projected 2012 design values and thus, tests for variability in meteorology. If any of the three 2012 projections was above the 1997 ozone standard, then the receptor would be considered a maintenance receptor. None of the 2012 projections for the Denver/NFR area was above the standard so the area was not considered a maintenance area. This approach was the same as the approach used for every potential receptor evaluated. It is worth noting that EPA's analysis included the 2005–2007 data for the Rocky Flats monitor (which is one of the highest monitored DVs in recent years for this monitor) that the commenter raised as a concern and pursuant to its methodology as previously described EPA's analysis determined that the Rocky Flats monitor would not be a maintenance receptor in 2012.

Further, EPA disagrees with commenter's conclusion that the modeling performed for the Denver/NFR attainment demonstration with the 2010 model projections establishes that any of the areas identified will have maintenance problems for the 1997 8-hour ozone NAAQS. We disagree with the commenter's conclusion that the Denver/NFR area monitors should be identified as "maintenance receptors" in large part because he bases his conclusion on projections for 2010 instead of 2012. This modeling used projections for 2010 not 2012, which as explained above and in response to comment no. 3 below is not the correct year for comparison, given the approach EPA has developed for determining maintenance receptors. EPA's analysis of maintenance receptors, which is based on the approach developed in the Transport Rule Proposal to be consistent with the DC Circuit's opinion in *North Carolina* v. *EPA* and uses projections for 2012, did not identify any maintenance receptors in the Denver/NFR area. This conclusion is consistent with evidence suggesting emissions are likely to trend downward (for example, with two more years of fleet turnover, this modeling would likely have projected lower levels of ozone in 2012) and preliminary monitoring data for 2010, which indicates that the Denver/NFR area is meeting the 1997 ozone standard. Further, EPA has reviewed Colorado's attainment demonstration for the Denver/NFR area and proposed that the combination of the modeling and Weight of Evidence analyses demonstrates that Denver will be in attainment in 2010.[5] [6]

In addition, the commenter's concern that an area west of Fort Collins might exceed 84 ppb in 2010 is based on exceedance values in the Colorado modeling analysis from a special analysis, called the Unmonitored Area Analysis (UAA), that is recommended for model grid cells that are not analyzed in the monitor based attainment demonstration because they are not located near a monitor. EPA does not believe that the UAA establishes that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i).

First, the UAA analysis is for 2010, which as noted above is not the correct analysis year. Second, EPA guidance indicates that NAAQS violations in the UAA should be handled on a case by case basis.[7] The guidance stresses that due to the lack of measured data, the examination of ozone concentrations as part of the unmonitored area analysis is more uncertain than the monitor based attainment test. This is true even in situations such as this where, as the commenter points out; no known errors were identified by the contractor in the modeling analysis. As a result, the UAA results are recommended to be treated as a separate test from the monitor based attainment test with less weight put on the conclusions of the UAA analysis. EPA's attainment demonstration guidance indicates "While it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor based test, the same requirements may not be appropriate in unmonitored areas." [8] The guidance recommends that it may be appropriate to deploy additional monitors in an area where the unmonitored analysis indicates a potential future year violation.

To address the concerns raised by the UAA, Colorado installed an additional ozone monitor in the area West of Fort Collins to determine whether the model predicted ozone concentrations are, in fact, valid. The special purpose monitor, located in Rist Canyon, began operation on May 14, 2009. The Rist Canyon monitoring station has collected data for two ozone seasons (approximately 16 months) since it began operating and the fourth highest daily maximum 8-hour average ozone concentration reading is 69 ppb for May through December of 2009 and 72 ppb for January through August 2010.[9]

Therefore, EPA does not believe the modeling performed for the State of Colorado's Denver/NFR area SIP can support the conclusion that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i). The methodology developed to identify maintenance receptors for the purpose of analyzing interference with maintenance with respect to the 1997 ozone and $PM_{2.5}$ NAAQS relies on base period monitoring data to identify monitor

[5] EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze," EPA–454/B–07–002, April 2007.

[6] 75 **Federal Register** 40 CFR part 52 [EPA–R08–OAR–2010–0285; FRL–9177–2], Proposed Rule, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions"; pages 42346–42361.

[7] Id.

[8] Id., page 32.

[9] The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR part 58 Appendix A. Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (*see* 40 CFR part 50, Appendix D).

locations that are projected to have maintenance problems in 2012. The methodology does not identify receptors based on modeling data alone. While the monitor has not operated long enough to account for variability in ozone levels, the newly installed monitor in the relevant area is reading well below the standard and this fact further confirms that the modeling results and the UAA results do not support the conclusion that receptors in the Denver/NFR area should be considered maintenance receptors for the purpose of CAA section 110(2)(D)(i).

EPA also disagrees with the commenter's comments that the 2002 CENRAP based modeling that evaluated New Mexico's impacts demonstrates a maintenance problem since the analysis was based on emission and meteorological conditions in 2002, not the analysis year of 2012. The CENRAP modeling used a 2002 emission inventory which is likely to project higher ozone levels and is therefore very conservative compared to modeling projections with a 2012 emission inventory analysis. The CENRAP modeling was performed to provide a conservative test using source apportionment modeling with a readily available modeling system (since construction of a complete modeling system from scratch requires significantly much more time and resources) to determine whether further analysis was warranted to determine if emissions from sources in New Mexico (and other states) could potentially interfere with maintenance in downwind nonattainment areas. The sole purpose of the modeling was to provide a very conservative technical analysis that would provide a basis for determining that an area did not have a significant impact upon the Denver/NFR area. Therefore, the CENRAP modeling cannot serve to provide a basis for determining that an area has an impact on other areas in 2012. It also cannot be relied upon to provide a basis to determine which areas should be considered as maintenance for the purposes of 110(a)(2)(D)(i).

In conclusion, EPA disagrees with the commenter. We have used a fully consistent approach in identifying areas that may have difficulty in maintaining attainment of the NAAQS. It is these areas that we have further evaluated to see if New Mexico's emissions would interfere with maintenance of the NAAQS.

Comment No. 3—The commenter also argued that EPA's analysis ignores whether emissions from New Mexico sources are at present interfering with maintenance in other States. The commenter argued that EPA erred by considering only whether New Mexico emissions will interfere with maintenance of the NAAQS in 2012 at monitors that would then be considered "maintenance receptors." It argues that this approach is inconsistent with the approach taken to determine whether New Mexico significantly contributes to nonattainment in other States (citing 75 FR 33174–33190). The commenter agreed that "EPA should ensure that New Mexico does not interfere with maintenance or contribute significantly to nonattainment in other states in the future," but argued that "the agency's duties under Section 110(a)(2)(D)(i)(I) apply both in the present and the future." In short, the commenter argued that EPA's approach is flawed simply because EPA evaluated whether or not there is significant contribution to nonattainment in other states looking at current data, whereas EPA evaluated whether there is interference with maintenance looking at future projected data.

EPA Response: EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(I)(i) of the Clean Air Act requires states to submit SIPs within 3 years of promulgation or revision of a NAAQS that:

(D) Contain adequate provisions–

(i) Prohibiting * * * any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—

(I) Contribute significantly to nonattainment or, interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

In determining the appropriate year to analyze in determining whether emissions from New Mexico will interfere with maintenance by any other State, EPA used an approach upheld by the DC Circuit in *North Carolina* v. *EPA.* In that case, the Court examined EPA's definition of "will" in "will contribute significantly." The placement of the word "will" at the end of section 110(a)(2)(D)(i) clarifies that it applies to all of the provisions that follow—both those in 110(a)(2)(D)(i)(I) and those in 110(a)(2)(D)(i)(II). Thus the DC Circuit's discussion of the meaning of the word "will" in "will significantly contribute" also applies to the meaning of the word "will" in "will * * * interfere with maintenance."

In *North Carolina* v. *EPA,* the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like the commenter argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated, even though those areas were projected to come into attainment by the year selected for the future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NOx SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

Contrary to the assertions of the commenter, EPA believes that evaluation of interference with maintenance using a future date is the most appropriate approach for that requirement. As explained in the proposed action, the court decision affecting the CAIR rule required EPA to reevaluate its approach to the interfere with maintenance requirement of section 110(a)(2)(D) and to develop a new approach to give that requirement separate meaning. In doing so, EPA has developed an approach that necessarily requires a number of years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time, in this instance 2012. EPA's prior evaluation of whether emissions from New Mexico were significantly contributing to nonattainment in other states was based on the data available at the time of that evaluation and before EPA had developed its approach for evaluating interference with maintenance. It is reasonable and appropriate for EPA to use, in this rulemaking, the current approach to identifying maintenance receptors for purposes of section 110(a)(2)(D) that EPA developed to be consistent with the direction given to EPA in *North Carolina* v. *EPA.*

Finally, we note that comments on the validity or reasonableness of EPA's approach to determining significant contribution in the prior action are not directly relevant to this rulemaking.

This rulemaking addresses only the "interfere with maintenance" and PSD prongs of section 110(a)(2)(D)(i).

IV. Final Action

We are approving two elements of the Interstate Transport SIP submitted by the State of New Mexico on September 17, 2007. Specifically, in this action we are approving the New Mexico Interstate Transport SIP provision that address the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in New Mexico do not interfere with maintenance of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in any other state, and the provision that addresses the requirement of Section 110(a)(2)(D)(i)(II) that emissions from New Mexico's sources do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent "significant deterioration of air quality." For purposes of the 1997 8-hour ozone NAAQS, EPA also is approving a SIP revision adopted by NMED on August 31, 2009, that modifies New Mexico's PSD SIP for the 1997 8-hour ozone NAAQS to include nitrogen oxides as an ozone precursor.

After fully considering all comments received on the proposed rule, we have concluded that the State's submission, and additional evidence evaluated by EPA, establishes that emissions from New Mexico sources do not interfere with the maintenance of the ozone and $PM_{2.5}$ NAAQS of 1997 in any other states or with measures required by SIPs of other states to prevent significant deterioration of air quality. Accordingly, New Mexico does not need to include additional emission limitations on its sources to eliminate any such contribution to other states for purposes of these NAAQS.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c) by revising the entry for Part 74 under "New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality".

■ b. In paragraph (e) revising the entry in the second table for "Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS" and adding a new entry immediately after it.

The amendments read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Part 74	Permits—Prevention of Significant Deterioration.	8/31/2009	11/26/2010 [Insert citation of publication].	
* *	*	*	*	* *

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
* *	*	*	*	* *
Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS.	New Mexico	9/17/2007	6/10/2010	Revisions to prohibit significant contribution to nonattainment in any other state. Approval for revisions to prohibit interference with maintenance and PSD measures in any other state.
Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS.	New Mexico	9/17/2007	11/26/2010 [Insert citation of publication].	Revisions to prohibit interference with maintenance and PSD measures in any other state.

[FR Doc. 2010–29397 Filed 11–24–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0314; FRL–9230–2]

Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving part of a State Implementation Plan (SIP) revision submitted by the State of Oklahoma that demonstrates that adequate provisions are in place to prohibit Oklahoma air emissions from interfering with Prevention of Significant Deterioration (PSD) measures required in the SIP of any other state for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. Specifically, EPA is approving the Oklahoma Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent "significant deterioration of air quality." EPA is also approving portions of revisions to the Oklahoma SIP submitted on February 14, 2002, and June 24, 2010. The February 14, 2002, revisions we are approving relate to PSD and Nonattainment New Source Review (NNSR) for major sources, source registration and emissions reporting and other rules of practice and procedure (except for revisions relating to minor sources). The June 24, 2010, revisions we are approving include nitrogen oxides (NO_X) as an ozone precursor in Oklahoma's PSD SIP for purposes of the 1997 8-hour ozone NAAQS. This action is being taken under section 110 and parts C and D of the Clean Air Act (CAA).

DATES: This final rule is effective on December 27, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2007–0314. All documents in the docket are listed at www.regulations.gov. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (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 or Mr. Bill Deese at 214–665–7253 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: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; fax number (214) 665–

7263; e-mail address *young.carl@epa.gov.* For further information regarding PSD or NNSR, contact: Rick Barrett or Dinesh Senghani, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7227 or (214) 665–7221; fax number (214) 665–7263; e-mail address *barrett.richard@epa.gov* or *senghani.dinesh@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

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I. Final Action

A. Oklahoma Demonstration of Adequate Provisions Prohibiting Emissions That Interfere With Prevention of Significant Deterioration Measures in Other States

We are approving a submission from the State of Oklahoma demonstrating that the State has adequately addressed one of the required elements of CAA section 110(a)(2)(D)(i), the element that requires that the State Implementation Plan prohibit air pollutant emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state. We have determined that emissions from sources in Oklahoma do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 8-hour ozone NAAQS or of the 1997 $PM_{2.5}$ NAAQS (CAA section 110(a)(2)(D)(i)(II)).

B. Oklahoma SIP Revisions Submitted on February 14, 2002 and June 24, 2010

We are also approving portions of revisions to the Oklahoma SIP submitted by the State on February 14, 2002, and June 24, 2010. The February 14, 2002, revisions we are approving are the portions related to: (1) PSD for major stationary sources and major modifications; (2) NNSR permitting requirements for major stationary sources and major modifications as a revision to the Oklahoma NNSR SIP; (3) source registration and emissions reporting as part of the Oklahoma Major NSR SIP; and (4) other rules of practice and procedure as part of the Oklahoma Major NSR SIP.[1] The June 24, 2010, revisions we are approving address NO_X as an ozone precursor in Oklahoma's PSD SIP for purposes of the 1997 8-hour ozone NAAQS.

In this action, we are not addressing the elements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, that pertain to prohibiting air pollutant emissions from within Oklahoma from: (1) Significantly contributing to nonattainment in any other state, (2) interfering with maintenance of the relevant NAAQS in any other state, and (3) interfering with measures required to protect visibility in any other state. We are also not addressing: (1) SIP revisions submitted on February 14, 2002, for Minor NSR SIP purposes, and (2) other SIP revisions submitted on June 24, 2010, that do not address NO_X as an ozone precursor.

More information on the SIP revisions we are approving can be found in our proposal published in the September 17, 2010 **Federal Register** (75 FR 56923). We are approving the SIP revisions pursuant to section 110 and parts C and D of the CAA.

II. What is the background for this action?

The background for today's actions is discussed in detail in our September 17, 2010, proposal to approve revisions to the Oklahoma SIP (75 FR 56923). In it, we proposed to approve revisions to the Oklahoma SIP related to: (1) Oklahoma's demonstration that adequate provisions are in place to prohibit Oklahoma air emissions from adversely affecting another state's PSD measures through interstate transport for the 1997 8-hour ozone NAAQS or standards and the 1997 $PM_{2.5}$ NAAQS, and (2) Oklahoma Administrative Code (OAC) revisions submitted on February 14, 2002, and June 24, 2010.

III. What comments did EPA receive and how has EPA responded to them?

We received comment letters from WildEarth Guardians and the Sierra Club on our proposed rulemaking. The comment letters are available for review in the electronic docket for this rulemaking at the regulations.gov Web site (Docket No. EPA–R06–OAR–2007–0314). Our responses to the comments are below.

Comment: One commenter provided comments on air quality models to be used to analyze and assess ozone and $PM_{2.5}$ impacts in the Oklahoma PSD program. The commenter stated that the CAA requires PSD regulations that specify with reasonable particularity each air quality model or models to be used under specified sets of conditions.[2] The commenter continued that EPA promulgated the PSD regulations in 1980, which included specific regulations to satisfy the requirements of the CAA. These PSD regulations included a requirement that a major source or major modification of a major source of air pollution cannot be constructed unless the owner or operator of such facility demonstrates, as required pursuant to section 42 U.S.C. 7410(j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region. The commenter indicated that EPA promulgated 40 CFR 52.21(k) & (l)(2008) to carry out the obligations of 42 U.S.C. 7475(e)(3)(D) and EPA incorporated by reference its Guideline on Air Quality Models as Appendix W into its permitting regulations.[3] [4] The commenter concluded that EPA's

[1] Because we are only acting on the revisions for major sources, the previously approved SIP for minor sources remains in effect.

[2] Commenter cited 42 U.S.C. 7475(a)(3), 42 U.S.C. 7475(e)(3).

[3] Appendix W is 40 CFR part 51, Appendix W—Guideline on Air Quality Models.

[4] Commenter cited 43 FR 26380, 26398 (June 19, 1978). "(k) Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of: (1) Any national ambient air quality standard in any air quality control region; or (2) Any applicable maximum allowable increase over the baseline concentration [a.k.a. increment] in any area." And "(l) Air quality models. (1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models). (2) Where an air quality model specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section."

Appendix W titled "Guideline on Air Quality Modeling" is a regulation.

The commenter indicated that EPA's regulations (including Appendix W) do not recommend which models must be used in the PSD program for the 1997 8-hour or $PM_{2.5}$ NAAQS as required by 42 U.S.C. 7475(a)(3) to ensure proper implementation of this critical PSD element.[5] The commenter cited 40 CFR 51, Appendix W, Section 5.2.1.c (ozone) and 5.2.2.1.c ($PM_{2.5}$) that indicate that for single source analysis, such as what would be conducted for PSD, the choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions and the model users should consult with the (EPA) Regional Office to determine the most suitable approach on a case-by-case basis. The commenter alleges that this provision is cited by permitting agencies for the proposition that there is no model available and major sources of ozone precursors and $PM_{2.5}$ obtain their PSD permits without demonstrating that they will not cause or contribute to a violation of the 1997 8-hour NAAQS using any modeling method.

The commenter asserted that EPA has not promulgated a guideline model for analysis of ozone precursors for ozone impacts or for $PM_{2.5}$ ambient analysis in Appendix W. The commenter noted that Appendix A to Appendix W discusses potential models to be used, but no actual recommendation has been made as to which model or models must be utilized to assure that new or modified major stationary sources in Oklahoma do not cause or contribute to a violation of the 1997 8-hour ozone or $PM_{2.5}$ NAAQS. The commenter asserts that EPA was obligated to resolve this dilemma through its Proposed Rule to ensure that Oklahoma's SIP complies with the statutory requirements of the Clean Air Act. The commenter continues that EPA's PSD regulations, 40 CFR part 51, Appendix W, and the Oklahoma SIP do not specify with reasonable particularity the model or models that will be used to ensure this outcome. The commenter noted that in a petition filed with the EPA in July of this year, the Sierra Club called on the EPA to require that photochemical grid models be used to demonstrate that a source will not cause or contribute to a violation of the 1997 8-hour Ozone or $PM_{2.5}$ NAAQS.[6] The petition noted that EPA and states in some respects have already used these models to ensure that individual sources do not cause or contribute to a violation of the NAAQS. Furthermore, these models have the advantage of ensuring that the impact of ozone and $PM_{2.5}$ precursors are taken into account to ensure that new or modified major stationary sources do not cause or contribute to NAAQS violations.

The commenter concluded that EPA should not approve this SIP until EPA specifies with reasonable particularly the model or models that must be used to ensure that new or modified major stationary sources in Oklahoma do not cause or contribute to violations of the 1997 8-hour Ozone and $PM_{2.5}$ NAAQS in accordance with 40 CFR 52.21(k) and the Oklahoma SIP, and the Agency has no basis for concluding that the Proposed Rule complies with the Clean Air Act, including the requirements of Section 110(a)(2)(D)(i)(II) and Section 110(l).

Response: EPA's PSD regulations are found at 40 CFR 51.166 and 52.21. PSD requirements for SIPs are found in 40 CFR 51.166. Similar PSD requirements for SIPs which have been disapproved and for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. These regulations do require an ambient impact analysis for ozone and $PM_{2.5}$ (40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m)). The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that:

"(1) All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of this part (Guideline on Air Quality Models).

(2) Where an air quality model specified in appendix W of this part (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102."

We are approving in the SIP a revision to OAC 252:100–8–35(e) submitted on February 14, 2002, that meets the requirements of 40 CFR 51.166(l). OAC 252:100–8–35(e) states: "(e) Air quality models.

(1) Any air quality dispersion modeling that is required under Part 7 of this Subchapter for estimates of ambient concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the Guidelines on Air Quality Models, OAQPS 1.2–080, U.S. Environmental Protection Agency, April, 1978 and subsequent revisions.

(2) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted, as approved by the Executive Director. Methods like those outlined in the Workbook for the Comparison of Air Quality Models, U.S. Environmental Protection Agency, April, 1977 and subsequent revisions, can be used to determine the comparability of air quality models."

Additionally, we are approving revisions to OAC 252:100–8–31 and 8–33 submitted on February 14, 2002, and June 24, 2010, which result in the Oklahoma SIP at OAC 252:100–8–35 requiring air quality impacts analysis for ozone consistent with 40 CFR 51.166.(m).[7]

The commenter is correct in the statement that EPA has not selected a single preferred model in Appendix A to Appendix W for conducting ozone impacts. Because of the complexity of modeling ozone and $PM_{2.5}$ as described below, we do not believe a model is available that is appropriate in all situations to model these pollutants. Therefore, we continue to believe it is appropriate for States to work with EPA Regional Offices as described in Appendix W to determine the appropriate approach to modeling these pollutants. As pointed out by the commenter, Oklahoma's SIP requires a demonstration that emissions from a new major source or a major modification of a major source will not result in an unacceptable impact to

[5] Commenter cited U.S.C. 7475(a)(3) indicating that it requires that within six months after August 7, 1977, EPA promulgate regulations respecting which models should be used for the analysis required under this subsection. The commenter also stated that 42 U.S.C. 7475(a)(3)(D) requires EPA to specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part and that EPA can make unique determinations based on meteorology or terrain issues.

[6] Commenter included two possible photochemical grid models as examples: Comprehensive Air Quality Model with Extensions (CAMx) and Community Multiscale Air Quality modeling system (CMAQ).

[7] In addition to the requirements of 40 CFR 51.166(m) 40 CFR 52.21(i)(xi)(5)(i) indicates that "No de minimis air quality level is provided for ozone." However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data. 40 CFR 51.165 and 51.166 also require permitting authorities to demonstrate that the proposed source will not cause or contribute to violation of the ozone NAAQS per 40 CFR 52.21(k).

ambient air. Furthermore, as described below, Oklahoma has followed Appendix W for new potential sources of ozone and $PM_{2.5}$.

With regard to ozone, a proposed emission source's emissions impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The level of impact a new source can have on ozone levels is dependent, in part, upon the pollutants already in the surrounding atmosphere with which emissions from the new source can react. In addition, meteorological factors such as wind speed, temperature, wind direction and atmospheric stability are also important. The most sophisticated analyses try to account for meteorology and this interaction with emissions from surrounding sources. EPA has not indentified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorology. As the commenter indicated the most sophisticated modeling analyses usually add a source into an existing modeling system and model the impact change from the source using a photochemical grid model, such as CAMx or CMAQ. There are also reactive plume models, however, that may be appropriate. We have approved the use of plume models in some instances, but these models are not always appropriate because of the difficulty in obtaining the background information to make an appropriate assessment of the photochemistry and meteorology impacts.

EPA has not selected a specific model for conducting an ozone analysis as it depends upon the details about the modeling systems available and if they are appropriate for assessing the proposed source impacts. Considering that a full development of a photochemical modeling system can be on the order of $100,000–250,000 or more, it is not generally appropriate to require a source to develop an entire photochemical modeling system just to evaluate its impacts. However, when an existing photochemical modeling system is available, it should be evaluated for potential use. More often now than 10 or 15 years ago, a photochemical modeling system may be available that covers the geographic area of concern, but even if photochemical modeling is available, it must be evaluated to determine its appropriateness for conducting an impact analysis. Things to consider in evaluating appropriateness of a photochemical modeling system include meteorology, year of emissions projections, model performance issues in the area of concern or in areas that might impact projections in the area of concern, etc. Therefore, even if photochemical modeling systems exist, they may be deemed inappropriate for use in evaluating a proposed source for ozone modeling. Because of these scientific issues EPA has not issued a "Preferred Model" for conducting source impacts on ozone to Appendix A of Appendix W.

In the specific situation of Oklahoma, the state conducted photochemical modeling as part of an Early Action Compact in the 2002–2004 timeframe. This photochemical modeling system was developed specifically for Oklahoma with a 4-kilometer fine grid and includes a base year emission inventory of 1999 and future year emission inventory projection of 2007. Oklahoma has been conducting sensitivity runs using their photochemical modeling system to evaluate the impacts of proposed sources of NO_X and VOC as part of their review of permit applications.[8] Oklahoma proposed and EPA Region 6 agreed that Oklahoma's photochemical modeling system was acceptable and it would be an appropriate tool for assessing ozone impacts when it is required. Oklahoma has been following this procedure for over 5 years for sources of emissions that were greater than 365 tons per year, and usually models anything greater than 200 tons per year of NO_X or VOCs. Based on previous modeling, EPA Region 6 and Oklahoma determined that sources with less annual emissions would not likely show an impact large enough to be a concern.

It is also difficult to specify a preferred model for $PM_{2.5}$ for similar reasons as described for ozone. While some $PM_{2.5}$ is directly emitted from sources (primary), depending on the source type, $PM_{2.5}$ is also formed by emissions condensing outside the stack or through chemical reactions with pollutants already in the atmosphere (secondary). EPA promulgated AERMOD as an acceptable model for performing near-field analyses of primary pollutants.[9] EPA considers that AERMOD is an acceptable model for estimating impacts of primary $PM_{2.5}$, but EPA has not developed a near-field model that includes the necessary chemistry algorithms to estimate secondary or condensible emission impacts in an ambient air analysis. To address this issue, EPA issued modeling guidance in 2010 to give further direction on how to conduct an ambient impact analyses for $PM_{2.5}$.[10] [11] This guidance provided that, with appropriate selection of a background monitor value, much of the $PM_{2.5}$ secondary and condensibles could be accounted for using monitoring data. In the case of a large source of secondary $PM_{2.5}$ or condensibles, additional modeling may be appropriate using other models for the secondary component, such as a photochemical model. Oklahoma has agreed to review proposed source modeling in accordance with EPA modeling guidance for $PM_{2.5}$ and to either model coarse particulate matter (PM_{10}) with a demonstration that the modeling is adequate as a surrogate for $PM_{2.5}$ impacts or to model $PM_{2.5}$ impacts directly using the AERMOD model in accordance with 40 CFR Appendix W and EPA's recent $PM_{2.5}$ modeling guidance.[12]

As the commenter pointed out, Appendix W Sections 5.2.1.c and 5.2.2.1.c stipulate that the EPA Regional Office has the authority to work with the state/local permitting authorities on a case-by-case basis in determining the adequate modeling approach for assessing ozone and $PM_{2.5}$ impacts. Due to the complexity of modeling Ozone and $PM_{2.5}$, we believe this is an appropriate approach rather than specifying a preferred model that would not be appropriate in all circumstances. The Oklahoma SIP requires sources follow the Guideline on Air Quality Models (40 CFR part 51, Appendix W) in performing modeling to ensure that new or modified major stationary sources in Oklahoma do not cause or contribute to violations of the Ozone and $PM_{2.5}$ NAAQS in Oklahoma or other States.

[8] Oklahoma Department of Environmental Quality Air Dispersion Modeling Guidelines, January 2008, Page 3: "Until EPA publishes guidelines for compliance for individual sources, large sources will be included in available photochemical modeling datasets and will be modeled with the Comprehensive Air Quality Model with extensions (CAMx) to assess impacts and demonstrate compliance with the standard."

[9] Appendix A to Appendix W of 40 CFR 51—Summaries of Preferred Air Quality Models, Part A–1.

[10] EPA memorandum, dated March 23, 2010, "Modeling Procedures for Demonstrating Compliance with $PM_{2.5}$ NAAQS", from Stephen D. Page, Director of Office of Air Quality Planning and Standards.

[11] EPA memorandum, dated February 26, 2010, "Model Clearinghouse Review of Modeling Procedures for Demonstrating Compliance with $PM_{2.5}$ NAAQS", from Tyler Fox, Leader of Air Quality Modeling Group of the Office of Air Quality Planning and Standards.

[12] July 29, 2010, letter from Eddie Terrill, Director, Air Quality Division, Oklahoma Department of Environmental Quality to Thomas Diggs, Associate Director for Air Programs, EPA Region 6.

In conclusion, for the reasons stated above it is difficult to identify and implement a national modeling tool. EPA has a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular modeling tool, instead treating the choice of a particular modeling tool for ozone and for non-primary $PM_{2.5}$ as circumstance-dependent. For primary $PM_{2.5}$ ambient air analysis the guideline model is AERMOD. EPA then determines whether the State's SIP revision submittal meets the PSD SIP requirements. Oklahoma has an EPA-approved PSD SIP that meets the EPA PSD SIP requirements. EPA guidance provides that a State does not interfere with the PSD program of other states if its own PSD program meets Federal requirements. Emissions from sources within Oklahoma are not interfering with the PSD of other states because the State of Oklahoma meets the Federal requirements for PSD. Therefore, we believe that the Oklahoma SIP has measures in place to insure that emissions from Oklahoma do not interfere with PSD programs in other States.

Comment: A comment was received that EPA cannot approve the portion of the Oklahoma SIP which requires an ambient impact analysis, including the gathering of air quality data, for any net emissions increase of 100 tons per year or more of NO_X subject to PSD, (OAC 252:100–8–33(c)), and cannot conclude that the Oklahoma SIP does not interfere with PSD measures required in any other State. The commenter stated that we propose to approve Oklahoma's finding that, unless a source emits 100 tons/year of NO_X or VOCs an analysis of impacts to ambient ozone concentrations is not required, that there is no support for this significance threshold, and it appears contrary to the Clean Air Act. The commenter further discussed our citation of 40 CFR 51.166(i)(5)(i)(e), stating that the regulation does not state that an analysis of ambient ozone impacts is not required if NO_X or VOC emissions are below the 100 tons/year threshold, (as noted by the statement "No de minimis air quality level is provided for ozone"), but rather only states that such analysis is generally required if emissions are higher than the 100 ton/year threshold.

Response: We disagree that we cannot (1) approve the revision to OAC 252:100–8–33 and (2) conclude that the Oklahoma SIP does not interfere with PSD measures required in any other State. We believe the commenter is mistaken in what the Oklahoma SIP requires. Under the Oklahoma SIP revisions we are approving, a new major source with a significant emissions increase of NO_X or VOC emissions, or a major source with a significant net emissions increase of NO_X or VOC emissions from a major modification must conduct an analysis of impacts to ambient ozone concentrations (OAC 252:100–8–35(a)).[13] However, such a source with a net emissions increase less than 100 tons/year of NO_X or VOCs will not have to gather ambient air quality [monitoring] data (OAC 252:100–8–33(c)). The EPA regulations cited at 40 CFR 51.166(i)(5)(i)(e) similarly allow for this exemption with respect to monitoring ozone air quality. The revisions we are approving (1) are consistent with the Clean Air Act and EPA regulations for regulating NO_X and VOC emissions and (2) ensure that the Oklahoma SIP does not interfere with PSD measures required in any other State. Table 1 is a comparison of Oklahoma and EPA PSD regulations for regulating NO_X emissions for ozone.

TABLE 1—COMPARISON OF OKLAHOMA AND EPA PSD REGULATIONS FOR REGULATING NO_X EMISSIONS FOR OZONE

PSD issue	Oklahoma regulations being approved	EPA regulations
Regulation of NO_X as an ozone precursor.	OAC 252:100–8–31. Definitions * * * * * "Regulated NSR pollutant" means (A) A regulated NSR pollutant is: (i) Any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.,* VOC and NO_X are precursors for ozone);	40 CFR 51.166(b)(49) Regulated NSR pollutant, for purposes of this section, means the following: (i) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (b)(49)(i) as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following: (a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.
Definition of Major Source for NO_X.	OAC 252:100–8–31. Definitions * * * * * "Major stationary source" means * * * * * (B) A major source that is major for VOC or NO_X shall be considered major for ozone.	40 CFR 51.166(b) Definitions. * * * * * (1) (ii) A major source that is major for volatile organic compounds or NO_X shall be considered major for ozone.
Definition of "Significant"	OAC 252:100–8–31. Definitions * * * * * "Significant" means: (A) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, significant means a rate of emissions that would equal or exceed any of the following rates: * * * * * (v) ozone: 40 TPY [tons per year] of VOC or NO_X,	40 CFR 51.166(b)(23)(i) Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: Pollutant and Emissions Rate * * * * * Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

[13] As noted in our proposal, OAC 252:100–8–31 was revised to include a NO_X emissions rate of 40 tons per year in the definition of significant (75 FR 56923, 56927).

TABLE 1—COMPARISON OF OKLAHOMA AND EPA PSD REGULATIONS FOR REGULATING NO_X EMISSIONS FOR OZONE—Continued

PSD issue	Oklahoma regulations being approved	EPA regulations
Exemptions with respect to monitoring.	OAC 252:100–8–33. Exemptions * * * * * (c) Exemption from monitoring requirements. The monitoring requirements of OAC 252:100–8–35 are not applicable for a particular pollutant if the emission increase of the pollutant from a new source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following listed amounts, or are pollutant concentrations that are not on the list. * * * * * (E) Ozone—no de minimis air quality level is provided for ozone, however any net increase of 100 TPY or more of VOC or NO_X subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data, * * * * *	40 CFR 51.166(i)(5) The plan may provide that the reviewing authority may exempt a proposed major stationary source or major modification from the requirements of paragraph (m) of this section [paragraph (m) is "Air quality analysis"], with respect to monitoring for a particular pollutant, if: (i) The emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts: * * * * * (e) Ozone; [1] * * * * * [1] No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

Comment: One commenter provided comments on Oklahoma SIP provisions that address excess emissions during periods of startup, shutdown and malfunction (SSM). The commenter asserted that Oklahoma's SSM SIP provisions are inconsistent with EPA policy and have the potential to undermine the effectiveness of the good neighbor requirements of the Act. He further contends that the current SSM provisions interfere with the assumptions on which this rulemaking is based. The commenter argues that Oklahoma cannot ensure that emissions from sources within its borders will not interfere with NAAQS in other states when that determination does not account for the impermissibly broad SSM SIP provisions. The commenter also urged EPA to require Oklahoma to make changes to the existing SSM SIP provisions.

Response: In the proposal, we proposed to find that the SIP revision submittal met the CAA requirements that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other State under part C of the CAA to prevent "significant deterioration of air quality." The comments relating to excess emissions provisions and their impact upon NAAQS in other states are outside the scope of this action.

In the proposal, we specifically note that we are not taking action on Chapter 100, Subchapter 9 (Excess Emissions Reporting Requirements). Further, in this action on 110(a)(2)(D)(i), we are not taking an action that reapproves the existing SSM provisions in the Oklahoma SIP. On July 15, 2010, the state withdrew the 2002 submittal on Chapter 100, Subchapter 9 (Excess Emissions Reporting Requirements) and submitted revised SSM provisions. We plan to take action on the submission at a later date. Commenters should resubmit their comments then.

IV. Statutory and Executive Order Review

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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 10, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart LL—Oklahoma

■ 2. In § 52.1920:

■ a. The table in paragraph (c) entitled "EPA APPROVED OKLAHOMA REGULATIONS" is amended as follows:

■ i. Revising the entries under "Regulation 1.4 Air Resources Management Permits Required" for Sections 1.4.1(a) through 1.4.3(c).

■ ii. Removing the centered heading and the entries for "1.4.4 Major Sources—Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas" and removing the centered heading and the entries for "1.4.5. Major Sources—Nonattainment Areas".

■ iii. Adding a new centered heading titled "Subchapter 1. General Provisions" immediately after the heading for Chapter 4 (OAC 252:4) Rules of Practice and Procedure, followed by new entries for Sections 252:4–1–1 through 252:.4–1–9.

■ iv. Adding a new centered heading titled "Subchapter 7. Environmental Permit Process" immediately after the entry for Section 252:4–5–9, followed by a new centered heading titled "PART 1. THE PROCESS", followed by new entries for Sections 252:4–7–1 through 252:4–7–19, followed by a new centered heading titled "PART 3. AIR QUALITY DIVISION TIERS AND TIME LINES", followed by new entries for Sections 252:4–7–31 through 252:4–7–34.

■ v. Adding a new entry for "252:4, Appendix C" immediately after the entry for 252:4, Appendix B under Appendices for OAC 252:Chapter 4.

■ vi. Revising the centered heading titled "Subchapter 5. Registration of Air Contaminant Sources" to read "Subchapter 5. Registration, Emissions Inventory and Annual Operating Fees", revising the entry for Section 252:100–5–1, adding a new entry for Section 252:100–5–1.1, revising the entry for Section 252:100–5–2, adding new entries for Sections 252:100–5–2.1 and 252:100–5–2.2, and revising the entry for Section 252:100–5–3 under "CHAPTER 100 (OAC 252:100), AIR POLLUTION CONTROL".

■ vii. Adding a new centered heading titled "Subchapter 8. Permits for Part 70 Sources" immediately after the entry for Section 252:100–5–3, followed by a new centered heading titled "PART 1. GENERAL PROVISIONS", followed by new entries for Sections 252:100–8–1 through 252:100–8–1.5, followed by a new centered heading titled "PART 5. PERMITS FOR PART 70 SOURCES", followed by new entries for Sections 252:100–8–2 through 252:100–8–8, followed by a new centered heading titled "PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS", followed by new entries for Sections 252:100–8–30 through 252:100–8–37, followed by a new centered heading titled "PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS", followed by new entries for Sections 252:100–8–50 through 252:100–8–54.

■ b. Paragraph (e) is amended by revising the heading of the table to read "EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP" and adding a new entry for the Oklahoma Transport SIP at the end of the table.

The additions and revisions read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
OKLAHOMA AIR POLLUTION CONTROL REGULATIONS				
Regulation 1.4. Air Resources Management Permits Required				
Regulation 1.4.1 General Permit Requirements				
1.4.1(a)	Scope and purpose	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.1(b)	General requirements	6/4/1990	7/23/1991, 56 FR 33715	Minor sources only.
1.4.1(c)	Necessity to obtain permit	6/4/1990	7/23/1991, 56 FR 33715	Minor sources only.
1.4.1(d)	Permit fees	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.2 Construction Permit				
1.4.2(a)	Standards required	6/4/1990	7/23/1991, 56 FR 33715	Minor sources only.
1.4.2(b)	Stack height limitation	6/11/1989	8/20/1990, 55 FR 33905	Minor sources only.
1.4.2(c)	Permit applications	6/4/1990	7/23/1991, 56 FR 33715	Minor sources only.
1.4.2(d)	Action on applications	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.2(e)	Public review	6/11/1989	8/20/1990, 55 FR 33905	Minor sources only.

EPA-APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
1.4.2(f)	Construction permit conditions	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.2(g)	Cancellation of authority to construct or modify.	[1] 2/6/1984	7/27/1984, 49 FR 30184	Minor sources only.
1.4.2(h)	Relocation permits	11/14/1990	7/23/1991, 56 FR 33715	Minor sources only.
	1.4.3 Operating Permit			
1.4.3(a)	Requirements	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.3(b)	Permit applications	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.
1.4.3(c)	Operating permit conditions	[1] 5/19/1983	8/25/1983, 48 FR 38635	Minor sources only.

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OKLAHOMA ADMINISTRATIVE CODE

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 4 (OAC 252:4). RULES OF PRACTICE AND PROCEDURE

Subchapter 1. General Provisions

252:4–1–1	Purpose and authority	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–2	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–3	Organization	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–4	Office location and hours; communications.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–5	Availability of a record	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–6	Administrative fees	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–7	Fee credits for regulatory fees	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–8	Board and councils	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–1–9	Severability	6/11/2001	11/26/2010 [Insert FR page number where document begins].	

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Subchapter 7. Environmental Permit Process

PART 1. THE PROCESS

252:4–7–1	Authority	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–2	Preamble	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–3	Compliance	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–4	Filing an application,	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–5	Fees	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–6	Receipt of applications	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–7	Administrative completeness review	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–8	Technical review	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–9	When review times stop	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–10	Supplemental time	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–11	Extensions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–12	Failure to meet deadline	6/11/2001	11/26/2010 [Insert FR page number where document begins].	

EPA-APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:4–7–13	Notices	6/11/2001	11/26/2010 [Insert FR page number where document begins].	NOT in SIP: Paragraph (e) and paragraph (f) requirements for permits other than Part 70 permits.
252:4–7–14	Withdrawing applications	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–15	Permit issuance or denial	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–16	Tier II and III modifications	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–17	Permit decision-making authority	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–18	Pre-issuance permit review and correction.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–19	Consolidation of permitting process	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
PART 3. AIR QUALITY DIVISION TIERS AND TIME LINES				
252:4–7–31	Air quality time lines	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–33	Air quality applications—Tier II	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:4–7–34	Air quality applications—Tier III	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
*	*	*	*	*
Appendices for OAC 252: Chapter 4				
*	*	*	*	*
252:4, Appendix C.	Permitting process summary	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
*	*	*	*	*
CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
*	*	*	*	*
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees				
252:100–5–1	Purpose	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–5–1.1	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	NOT in SIP: Paragraph (D) under "Regulated air pollutants".
252:100–5–2	Registration of potential sources of air contaminants.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–5–2.1	Emission inventory	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–5–2.2	Annual operating fees	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–5–3	Confidentiality of proprietary information.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
Subchapter 8. Permits for Part 70 Sources				
PART 1. GENERAL PROVISIONS				
252:100–8–1	Purpose	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–1.1	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–1.2	General information	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–1.3	Duty to comply	6/11/2001	11/26/2010 [Insert FR page number where document begins].	

EPA-APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–8–1.4	Cancellation or extension of a construction permit or authorization under a general construction permit.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–1.5	Stack height limitations	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
PART 5. PERMITS FOR PART 70 SOURCES				
252:100–8–2	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	NOT in SIP: Paragraph (C) under "Insignificant activities".
252:100–8–3	Applicability	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–4	Requirements for construction and operating permits.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–5	Permit applications	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–6	Permit content	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–6.1	General permits	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–6.2	Temporary sources	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–6.3	Special provisions for affected (acid rain) sources.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7	Permit issuance	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7.1	Permit renewal and expiration	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7.2	Administrative permit amendments and permit modifications.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7.3	Reopening of operating permits for cause.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7.4	Revocations of operating permits	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–7.5	Judicial review	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–8	Permit review by EPA and affected states.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS				
252:100–8–30	Applicability	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–31	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	Revisions submitted on June 24, 2010 are approved as follows: a major source that is major for NO_X shall be considered major for ozone in the definition of Major Stationary Source; Regulated NSR pollutant definition; and definition of Significant.
252:100–8–32	Source applicability determination	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–33	Exemptions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	The revision to OAC 252:100–8–33(c)(E) submitted on June 24, 2010 is approved.
252:100–8–34	Best available control technology	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–35	Air quality impact evaluation	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–36	Source impacting Class I areas	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–37	Innovative control technology	6/11/2001	11/26/2010 [Insert FR page number where document begins].	

EPA-APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS				
252:100–8–50 ..	Applicability	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–51 ..	Definitions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–52 ..	Source applicability determination	6/11/2001	11/26/2010 [Insert FR page number where document begins].	NOT in SIP: paragraph (b)(2).
252:100–8–53 ..	Exemptions	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–54 ..	Requirements for sources located in nonattainment areas PSD or NNSR program submissions containing rule changes for $PM_{2.5}$.	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
*	*	*	*	*	*	*

[1] Submitted.

* * * * * (e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*	*	*
Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS.	Statewide	5/1/2007	11/26/2010 [Insert citation of publication].	Approval for revisions to prohibit interference with Prevention of Significant Deterioration in any other State.

[FR Doc. 2010–29398 Filed 11–24–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0669; FRL–9231–2]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State for Idaho for the purpose of addressing the "good neighbor" provisions of the Clean Air Act (the Act or CAA) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 $PM_{2.5}$ NAAQS. This SIP revision addresses the requirement that the State of Idaho's SIP have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is approving the Idaho Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Idaho sources do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state, interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state, and interfere with measures required in the SIP of any other state under part C of subchapter I of the CAA to prevent significant deterioration of air quality. This action is being taken under section 110 and part C of subchapter I of the CAA.

DATES: This action is effective on December 27, 2010.

ADDRESSES: Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–6706.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

Table of Contents

I. What action is EPA taking?
II. What is the background for this action?
III. Response to Comments
A. Comments Relating to the "Significant Contribution to Nonattainment" Element
B. Comments Relating to the "Interfere With Maintenance" Element
C. Comment Relating to Section 110(l)
IV. Final Action
V. Scope of Action

I. What action is EPA taking?

EPA is approving a portion of Idaho's Interstate Transport State Implementation Plan (SIP) revision for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS submitted by the Idaho Department of Quality (IDEQ) on June 28, 2010. Specifically, we are approving the portion of the plan that addresses

the following elements of CAA section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS. IDEQ addressed element (4), interference with any other state's required measures to protect visibility, by referring to its Regional Haze SIP, which will be submitted separately. EPA will take action on the visibility element in a separate action. None of the findings and conclusions in this notice, accordingly, relate to EPA's analysis of interference with another state's required measures to protect visibility. EPA will also take action on the portion of Idaho's SIP that addresses the 2006 $PM_{2.5}$ NAAQS [1] in a separate action.

II. What is the background for this action?

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the promulgation of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. This action does not address the requirements of the 2006 24-hour $PM_{2.5}$ NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in a future action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D) for the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards.

On June 28, 2010, we received a SIP revision from the State of Idaho to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. The state based its submittal on EPA's 2006 Guidance. As explained in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that contains adequate provisions to prohibit emissions from sources within that state from adversely affecting another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the first three elements: (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS. Idaho asserted in its SIP submission that its current SIP is adequate to prevent such contribution and interference, and thus no additional controls or revisions are needed with respect to the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

On September 13, 2010, EPA published a proposal to approve the portion of Idaho's SIP submission that addresses the three elements of CAA section 110(a)(2)(D) for both the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS: (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS (75 FR 55494). EPA finds that Idaho's Interstate Transport SIP provisions addressing elements (1), (2), and (3) of section 110(a)(2)(D)(i) are consistent with the requirements of the CAA.

III. Response to Comments

EPA received one letter from WildEarth Guardians (WG) commenting on several aspects of EPA's proposed approval of the Idaho Interstate Transport SIP. These comments addressed the "significant contribution to nonattainment," and "interfere with maintenance," elements of the SIP for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. WG also alleged in its comments that EPA failed to comply with the requirements of CAA Section 110(l) with respect to the attainment and maintenance of the current NAAQS. No comments were received that specifically addressed EPA's proposed approval of the "interfere with any other state's required measures to prevent significant deterioration" elements of the SIP for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. In this section EPA summarizes and responds to the significant adverse comments submitted by the commenter.

A. Comments Relating to the "Significant Contribution to Nonattainment" Element

Comment No. 1—WG argued that Idaho and EPA did not appropriately assess impacts to nonattainment in downwind states. According to WG, Idaho failed to assess significance of downwind impacts in accordance with EPA guidance and precedent. The commenter identified statements by EPA in the context of the 1998 NO_X SIP Call as the applicable guidance for this purpose. WG asserts that, based on the precedent of the NO_X SIP Call, the following issues need to be addressed in determining whether or not an area is significantly contributing to nonattainment in downwind states: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which the upwind state's emissions are linked; (c) the ambient impact of the emissions from the upwind state's sources on the downwind nonattainment problems; and (d) the availability of highly cost-effective control measures for upwind emissions. 63 FR 57356, 57376 (October 27, 1998).

EPA Response—EPA disagrees with the commenter's conclusions regarding the relevant guidance and standards necessary to determine whether or not a state's emissions contribute significantly to nonattainment in another state. Section 110(a)(2)(D) does not explicitly specify how states or EPA should evaluate the existence of, or extent of, interstate transport and whether such transport is of sufficient magnitude to constitute "significant contribution to nonattainment" as a regulatory matter. The statutory language is ambiguous on its face and EPA must reasonably interpret that language and its application to factual situations before the Agency.

The NO_X SIP Call is one rulemaking in which EPA evaluated the existence of, and extent of, interstate transport. In that action, EPA developed an approach that allowed the Agency to evaluate whether there was significant contribution to ozone nonattainment across an entire region that was comprised of many states. That

[1] The $PM_{2.5}$ standard was revised in 2006. *See* "National Ambient Air Quality Standards for Particulate Matter," at 71 FR 61144 (October 17, 2006).

approach included regional scale modeling and other technical analyses that EPA deemed useful to evaluate the issue of interstate transport on that geographic scale and for the facts and circumstances at issue in that rulemaking. EPA does not agree, however, that the approach used in the NO_X SIP Call is necessarily the only way that states or EPA may evaluate the existence of, and extent of, interstate transport in all situations, and especially in situations where the state and EPA are evaluating the question on a state by state basis, and in situations where there is not evidence of widespread interstate transport.

The commenter failed to acknowledge that EPA issued specific guidance making recommendations to states about how to address section 110(a)(2)(D) in SIP submissions for the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA issued this guidance document, entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" on August 15, 2006 ("2006 Guidance").[2] The 2006 Guidance postdated the NO_X SIP Call, and was developed by EPA specifically to address SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In EPA's proposal, this Guidance was identified by the Agency as applicable to the analysis before it.

In the 2006 Guidance, EPA explicitly stated its view that the "precise nature and contents of such a submission [are] not stipulated in the statute" and that the contents of the SIP submission "may vary depending upon the facts and circumstances related to the specific NAAQS."[3] Moreover, within that Guidance, EPA expressed its view that "the data and analytical tools available" at the time of the SIP submission "necessarily [affect] * * * the content of the required submission."[4] To that end, EPA specifically recommended that states located within the geographic region covered by the "Clean Air Interstate Rule" (CAIR)[5] comply with section 110(a)(2)(D) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS by complying with CAIR itself. For states outside the CAIR rule region, however, EPA recommended that states develop their SIP submissions for section 110(a)(2)(D) considering relevant information.

EPA explicitly recommended that relevant information for section 110(a)(2)(D) submissions addressing significant contribution to nonattainment "might include, but is not limited to, information concerning emissions in the state, meteorological conditions in the state, the distance to the nearest nonattainment area in another state, reliance on modeling conducted by EPA in determining that such state should not be included within the ambit of the CAIR, or such other information as the state considers probative on the issue of significant contribution."[6] In addition, EPA recommended that states might elect to evaluate significant contribution to nonattainment using relevant considerations comparable to those used by EPA in CAIR, including evaluating impacts as of an appropriate year and in light of the cost of control to mitigate emissions that resulted in significant contribution.[7]

WG did not acknowledge or discuss EPA's 2006 Guidance for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, even though it was specifically identified and applied in EPA's proposal. EPA believes that the Idaho submission and EPA's evaluation of it were consistent with EPA's 2006 Guidance for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. For example, as discussed in the proposal notice, the state and EPA considered information such as monitoring data in Idaho and downwind states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states. These are among the types of information that EPA recommended and that EPA considers relevant under the circumstances of this action. Thus, EPA has concluded that the state's submission meets the requirements of section 110(a)(2)(D) and that EPA's evaluation of the state's SIP is consistent with the applicable 2006 Guidance and the Act.

Finally, EPA notes that the considerations in the 2006 Guidance are consistent with the concepts that WG identified as applicable from the NO_X SIP Call: (a) The overall nature of the problem; (b) the extent of the downwind nonattainment problems to which the upwind state's emissions are linked; (c) the ambient impact of the emissions from the upwind state's sources on the downwind nonattainment problems; and (d) the availability of highly cost-effective control measures for upwind emissions. These factors were taken into account in EPA's analysis of the Idaho SIP with the exception of consideration of the costs of controls for sources. EPA did not evaluate those costs because the available evidence indicated that there is very little contribution from emissions from Idaho sources to nonattainment in other states.

Comment No. 2 —WG objected to EPA's proposed approval on the grounds that Idaho and EPA failed to adequately analyze and assess the contribution from Idaho's emissions to downwind states, and did not conduct an actual assessment of the significance of any such contribution or impacts.

EPA Response—EPA disagrees with WG's characterization of Idaho's and EPA's demonstration and analysis. WG again assumes that section 110(a)(2)(D) explicitly demands the type of modeling analysis that the commenter advocates throughout its comments. WG contends that any analytical approach that is not identical to the approach used in the NO_X SIP Call is impermissible. In addition, WG failed to acknowledge that in other actions under section 110(a)(2)(D), EPA has used a variety of analytical approaches, short of modeling, to evaluate whether a specific state is significantly contributing to violations of the NAAQS in another state (*e.g.,* the west coast states that EPA concluded should not be part of the geographic region of the CAIR rule based upon qualitative factors, and not by the zero out modeling EPA deemed necessary for some other states).

EPA's analysis took into account meteorological conditions, monitoring data, distance, topography and other quantitative and qualitative forms of available information to evaluate and identify a potentially significant contribution from Idaho's emissions to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in other states. As noted in EPA's proposal, no single piece of information informing this analysis is, by itself, dispositive of the issue. Instead, the total weight of all the evidence taken together was used to evaluate significant contributions to violations of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in another state. Based on the available information,

[2] Memorandum from William T. Harnett entitled Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards (Aug. 15, 2006) ("2006 Guidance"), p. 3. An electronic copy is available for review at the regulations.gov Web site as Document ID No. EPA–R10–OAR–2010–0669–0005.

[3] 2006 Guidance at 3.

[4] *Id.*

[5] In this action, "CAIR" refers to the final rule published in the May 12, 2005, **Federal Register** and entitled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_X SIP Call; Final Rule." 70 FR 25162.

[6] 2006 Guidance at 5.

[7] *Id.*

using a combination of quantitative data and qualitative analyses, we concluded emissions from Idaho do not contribute significantly to downwind ozone nonattainment. Thus, contrary to WG's assertion, EPA did perform an analysis and assessment that formed a reasonable basis for the conclusion that emissions from Idaho do not contribute significantly to downwind ozone and $PM_{2.5}$ nonattainment, using a combination of quantitative data and qualitative analyses. EPA does not agree that the type of analysis advocated by WG is required by the statute and is necessary to support a rational determination in this instance.

Comment No. 3—WG objected to EPA's proposed approval because EPA's assessment of impacts on downwind states was based upon monitoring data in those states, and WG alleges that this is not an adequate means of evaluating significant contribution to nonattainment. WG is concerned that the impacts of Idaho's emissions in areas without monitors were not assessed and that EPA only assessed "impacts to areas that are designated as nonattainment or with monitors that have recorded violations of the ozone and $PM_{2.5}$ NAAQS." WG argued that this reliance on monitoring data is inconsistent with both section 110(a)(2)(D) and with EPA's guidance provided in the NO_X SIP Call. In support of its objections, WG quoted statements from the NO_X SIP Call proposal in which EPA discussed its proposed interpretation of the statutory phrase "contribute significantly to nonattainment":

> "The EPA proposes to interpret this term to refer to air quality and not to be limited to currently-designated nonattainment areas. Section 110(a)(2)(D) does not refer to 'nonattainment areas,' which is a phrase that EPA interprets to refer to areas that are designated nonattainment under section 107 (section 107(d)(1)(A)(I))."

According to WG, this statement, and similar ones in the context of the final NO_X SIP Call rulemaking, establish that states and EPA cannot utilize monitoring data to evaluate the existence of, and extent of, interstate transport. Furthermore, WG interprets the reference to "air quality" in these statements to support its contention, amplified in later comments, that EPA must evaluate significant contribution in areas in which there is no monitored nonattainment.

EPA Response—EPA disagrees with WG's arguments. First, WG misunderstands the point that EPA was making in quoted statement from the NO_X SIP Call proposal (and that EPA has subsequently made in the context of CAIR). When EPA stated that it would evaluate impacts on air quality in downwind states, independent of the current formal "designation" of such downwind states, it was not referring to air quality in the absence of monitor data. EPA's point was that it was inappropriate to wait for either initial designations of nonattainment for a new NAAQS under section 107(d)(1), or for a redesignation to nonattainment for an existing NAAQS under section 107(d)(3), before EPA could assess whether there is significant contribution to nonattainment of a NAAQS in another state.

For example, in the case of initial designations, section 107(d) contemplates a process and timeline for initial designations that could well extend for two or three years following the promulgation of a new or revised NAAQS. By contrast, section 110(a)(1) requires states to make SIP submissions that address section 110(a)(2)(D) and interstate transport "within 3 years or such shorter period as the Administrator may prescribe" of EPA's promulgation of a new or revised NAAQS. This schedule does not support a reading of section 110(a)(2)(D) that is dependent upon formal designations having occurred first. This is a key reason why EPA determined that it was appropriate to evaluate interstate transport based upon monitor data, not designation status, in the CAIR rulemaking and in the matter at hand.

WG's misunderstanding of EPA's statement concerning designation status evidently caused WG to believe that EPA's assessment of interstate transport in the NO_X SIP Call was not limited to evaluation of downwind areas with monitors. This is simply incorrect. In both the NO_X SIP Call and CAIR, EPA evaluated significant contribution to nonattainment as measured or predicted at monitors. For example, in the technical analysis for the NO_X SIP Call, EPA specifically evaluated the impacts of emissions from upwind states on monitors located in downwind states. The NO_X SIP Call did not evaluate impacts at points without monitors, nor did the CAIR rulemaking. EPA believes that this approach to evaluating significant contribution is correct under section 110(a)(2)(D), and EPA's general approach to this threshold determination has not been disturbed by the courts.[8]

Finally, EPA disagrees with WG's argument that the assessment of significant contribution to downwind nonattainment must include evaluation of impacts on non-monitored areas. First, neither section 110(a)(2)(D)(i)(I) provisions, nor the 2006 Guidance support WG's position, as neither refers to any requirement or recommendation to assess air quality in non-monitored areas.[9] The same focus on monitored data as a means of assessing interstate transport is found in the NO_X SIP Call and in CAIR. An initial step in both the NO_X SIP Call and CAIR was the identification of areas with current monitored violations of the ozone and/or $PM_{2.5}$ NAAQS.[10] The subsequent modeling analyses for NAAQS violations in future years (2007 for the SIP Call and 2010 for CAIR) likewise evaluated future violations at monitors in areas identified in the initial step. Thus, WG is simply in error that EPA has not previously evaluated the presence and extent of interstate transport under section 110(a)(2)(D) by focusing on monitoring data. Indeed, such monitoring data was at the core of both of these efforts. In neither of these rulemakings did EPA evaluate significant contribution to nonattainment in areas in which there was no monitor. Reliance on monitoring data is reasonable and appropriate, because data from a properly placed federal reference method monitor is the way in which EPA ascertains that there is a violation of the 1997 8-hour ozone or $PM_{2.5}$ NAAQS in a particular area. Put another way, in order for there to be significant contribution to nonattainment for the 1997 8-hour ozone or $PM_{2.5}$ NAAQS, there must be a monitor with data showing a violation of that NAAQS. EPA concludes that by considering data from monitored areas, its assessment of whether emissions from Idaho contribute significantly to ozone or $PM_{2.5}$ nonattainment in downwind states is consistent with the 2006 Guidance, and with the approach used by both the CAIR rule and the NO_X SIP Call.

Comment No. 4—In support of its comments that EPA should assess significant contribution to nonattainment in nonmonitored areas,

[8] *Michigan* v. *U.S. EPA,* 213 F.3d 663, 674–681 (DC Cir. 2000); *North Carolina* v. *EPA,* 531 F.3d 896, 913–916 (D.C. Cir. 2008) (upholding EPA approach to determining threshold despite remanding other aspects of CAIR).

[9] 2006 Guidance, p. 5.

[10] "Based on this approach, we predicted that in the absence of additional control measures, 47 counties *with air quality monitors* [emphasis ours] would violate the 8-hour ozone NAAQS in 2010. * * *" From the CAIR proposed rule of January 30, 2004 (69 FR 4566, 4581). The NO_X SIP call proposed rule action reads: "* * * For current nonattainment areas, EPA used air quality data for the period 1993 through 1995 to determine which counties are violating the 1-hour and/or 8-hour NAAQS. These are the most recent 3 years of fully quality assured data which were available in time for this assessment," 62 FR 60336.

WG argued that existing modeling performed by another organization "indicates that large areas of neighboring states will likely violate the ozone NAAQS." According to WG, these likely "violations" of the ozone NAAQS were predicted for the year 2018, as reflected in a slide from a July 30, 2008, presentation before the Western Regional Air Partnership ("Review of Ozone Performance in WRAP Modeling and Relevant to Future Regional Ozone Planning"). WG asserted that: "Slide 28 of this presentation displays projected 4th highest 8-hour ozone reading for 2018 and indicates that air quality in areas throughout Utah, Wyoming, Colorado, and Nevada will exceed and/or violate the 1997 ozone NAAQS. * * *" In short, WG argues that modeling performed by the WRAP establishes that there will be violations of the 1997 8-hour ozone NAAQS in 2018 in non-monitored areas in these western states.

EPA Response—EPA disagrees with this comment on several grounds. First, as explained in response to other comments, EPA does not agree that it is appropriate to evaluate significant contribution to nonattainment for the 1997 8-hour ozone NAAQS by modeling ambient levels in areas where there is no monitor to provide data to establish a violation of the NAAQS in question. Section 110(a)(2)(D) does not require such an approach, EPA has not taken this approach in the NO_X SIP Call or other rulemakings under section 110(a)(2)(D), and EPA's prior analytical approach has not been disturbed by the courts.

Second, WG's own description of the ozone concentrations predicted for the year 2018 as projecting "violations" of the ozone NAAQS is inaccurate. Within the same sentence, quoted above, slide 28 is described as displaying the projected 4th max ozone reading for the year 2018, and as indicating that "* * * air quality * * * will exceed or *violate* [our emphasis] the 1997 ozone NAAQS." By definition, a one year value of the 4th max above the NAAQS only constitutes an exceedance of the NAAQS; to constitute a violation of the 1997 8-hour ozone NAAQS, the standard must be exceeded for three consecutive years at the same monitor. Thus, even if the WRAP presentation submitted by WG were technically sound, the conclusion drawn from it by WG is inaccurate and does not support its claim of projected violations of the NAAQS in surrounding states.

EPA has also reviewed the WRAP presentation submitted by WG and believes that there was a substantial error in the WRAP modeling software that led to an overestimation of ground level ozone concentrations. A recent study conducted by Environ for the Four Corners Air Quality Task Force (FCAQTF; Stoeckenius *et al.,* 2009) has demonstrated that excessive vertical transport in the CMAQ and CAMx models over high terrain was responsible for overestimated ground level ozone concentrations due to downward transport of stratospheric ozone.[11] Environ has developed revised vertical velocity algorithms in a new version of CAMx that eliminated the excessive downward transport of ozone from the top layers of the model. This revised version of the model is now being used in a number of applications throughout high terrain areas in the West. In conclusion, EPA believes that this key inadequacy of the WRAP model, noted above, makes it inappropriate support for WG's concerns about large expanses of 8-hour ozone nonattainment areas projected for 2018 in areas without monitors.

Comment No. 5—As additional support for its assertion that EPA should require modeling to assess ambient levels in unmonitored portions of other states, WG relied on an additional study entitled the "Uinta Basin Air Quality Study (UBAQS)." The commenter argued that the UBAQS study further supports its concern that limiting the evaluation of downwind impacts only to areas with monitors fails to assess ozone nonattainment in non-monitored areas. According to the commenter, UBAQS modeling results show that: (a) The Wasatch front region is currently exceeding and will exceed in 2012 the 1997 8-hour ozone NAAQS, and (b) based on 2005 meteorological data, portions of the four counties in the southwest corner of Utah are also currently in nonattainment and will be in nonattainment in 2012.[12]

EPA Response—As noted above, EPA does not agree that it is appropriate to assess significant contribution to nonattainment for the 1997 8-hour ozone NAAQS in the way advocated by WG. Even taking the UBAQS modeling results at their face value, however, EPA does not agree that the 8-hour ozone nonattainment (current and projected) in the Wasatch Front Range area supports the commenter's concerns about the need to evaluate the possibility of significant contribution to nonattainment in non-monitored areas. EPA sees several problems with the commenter's interpretation of the UBAQS analysis results for counties in Utah's southwestern corner: "based on 2005 meteorological data, portions of Washington, Iron, Kane, and Garfield Counties are also in nonattainment and will be in nonattainment in 2012."

First, WG's interpretation of the predicted ozone concentrations shown in Figures 4–3a and 4–3b (pages 5 and 6 of the comment letter) is inaccurate. A close review of the legend in these figures indicates that the highest ozone concentrations predicted by the model for portions of the counties noted above are somewhere between 81.00 and 85.99 ppb, but a specific concentration is not provided. If the ozone concentration is actually predicted to be smaller than or equal to 84.9 ppb, then the area is attaining; if it is predicted as greater than 84.9 ppb then it is not attaining. This means that current and predicted design values for the southwestern Utah area identified in Figures 4–3a and 4–3b could both be in attainment or both in nonattainment, or one of them in attainment and the other in nonattainment, for the 1997 8-hour ozone NAAQS.

Second, even if the design values predicted for these unmonitored areas were at the top of the 81.00–85.99 ppb range, their reliability would remain questionable. The UBAQS itself identifies and illustrates major shortcomings of its modeling analysis, only to neglect assessing the impact of these shortcomings on the modeling results.[13] The study deviates in at least two significant ways from EPA's 2007 guidance on SIP modeling.[14] One issue is the UBAQS modeling reliance on fewer than the five years of data recommended by EPA to generate a current 8-hour ozone design value (DVC). UBAQS relaxed this requirement so that sites with as little as 1 year of data were included as DVCs in the analysis. The other issue is the computation of the relative responsive factor (RRF), which directly affects the modeling's future design value (DVF).[15] Again due to unavailability of data satisfying EPA's recommendation that the RRF be based on a minimum of five days of ozone concentrations above 85

[11] Stoeckenius, T.E., C.A. Emery, T.P. Shah, J.R. Johnson, L.K. Parker, A.K. Pollack, 2009. "Air Quality Modeling Study for the Four Corners Region." Prepared for the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM, by ENVIRON International Corporation, Novato, CA.

[12] The southwestern area referred to by the commenter includes portions of Washington, Iron, Kane, and Garfield Counties.

[13] *See* "UBAQS," pages 4–27 to 4–29.

[14] EPA. 2007. Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze. Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina (*http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*).

[15] DVC × RRF = DVF.

ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.[16] EPA concludes that the modeling analysis results used by the WG are unreliable for projecting non-attainment status and therefore do not support its comments.

Comment No. 6—In support of its arguments that EPA should not limit assessment of significant contribution to nonattainment through evaluation of impacts at monitors, but include, through a modeling analysis, impacts where there are no such monitors, the commenter cited a past statement by EPA to the effect that the monitor network in the western United States needs to be expanded. The quoted statements included EPA's observation that "[v]irtually all States east of the Mississippi River have at least two to four non-urban O3 monitors, while many large mid-western and western States have one or no non-urban monitors." 74 FR 34,525 (July 16, 2009). From this statement, the commenter argues that it is not appropriate for EPA to limit the evaluation of significant contribution to nonattainment in other states to a consideration of monitor data instead of modeling ambient pollutant levels because there are states with few or no non-urban monitors surrounding Idaho.

EPA Response—EPA acknowledges that WG's observation that there are relatively few monitors in the western states, and that relatively few monitors are currently located in non-urban areas of western states, is factually correct. However, the commenter failed to note that the quoted statement from EPA concerning the adequacy of western monitors came from the Agency's July 16, 2009, proposed rulemaking entitled "Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements." This statement was taken out of context, because EPA was in that proposal referring to changes in state monitoring networks that it anticipates will be necessary in order to implement *not* the 1997 8-hour ozone NAAQS that is the subject of this rulemaking, but rather the 2008 ozone NAAQS for which there are concerns that there will be a need to evaluate ambient levels in previously unmonitored areas of the western United States. The fact that additional monitors may be necessary in the future for the newer ozone NAAQS does not automatically mean that the existing ozone monitoring networks are insufficient for the 1997 8-hour ozone NAAQS, as the commenter implies. Indeed, states submit annual monitoring network plans to EPA and EPA evaluates these to insure that they meet the applicable requirements. For example, Idaho itself submits just such a report on an annual basis, and EPA reviews it for adequacy.[17] All other states submit comparable reports.

Comment No. 7—WG objected to EPA's proposed approval of the Idaho SIP submission because neither Idaho nor EPA performed a specific modeling analysis to assure that emissions from Idaho sources do not significantly contribute to nonattainment in downwind states. According to the commenter, EPA's decision to use a qualitative approach to determine whether emissions from Idaho contribute significantly to downwind nonattainment is not consistent with its own preparation of a regional model to evaluate such impacts from other states as part of CAIR.

EPA Response—EPA disagrees with WG's proposition that only modeling can establish whether or not there is significant contribution from one state to the nonattainment of another. First, as noted above, EPA does not believe that section 110(a)(2)(D) requires a modeling analysis in all instances. While modeling can be useful, EPA believes that other forms of analysis can be sufficient to evaluate whether or not there is significant contribution to nonattainment. For this reason, EPA's 2006 Guidance recommended other forms of information that states may rely upon as part of their section 110(a)(2)(D) submissions for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. EPA has concluded that its qualitative approach to the assessment of significant contribution to downwind ozone and $PM_{2.5}$ nonattainment is consistent with EPA's 2006 Guidance.

Second, EPA notes that WG's comment also reflects a misunderstanding of the approach EPA used in the remanded CAIR. In CAIR, EPA determined that several factors provided a reasonable basis to exclude certain western states from the ambit of that rulemaking: "[i]n analyzing significant contribution to nonattainment, we determined it was reasonable to exclude the Western U.S., including the states of Washington, Idaho, Oregon, California, Nevada, Utah, and Arizona from further analysis due to geography, meteorology, and topography. Based on these factors we concluded that the $PM_{2.5}$ and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these States' boundaries. * * *" 69 FR 4581 (January 30, 2004).

EPA has taken a similar approach to assess whether Idaho contributes significantly to violations of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in downwind states. In the proposed action, EPA explained several forms of substantive and technically valid evidence that led to the conclusion that emissions from Idaho sources do not contribute significantly to nonattainment, in accordance with the requirement of Section 110(a)(2)(D).

Comment No. 8—In further support of its argument that EPA must use modeling to evaluate whether there is significant contribution to nonattainment under section 110(a)(2)(D), WG noted that EPA itself asks other agencies to perform such modeling in other contexts. As examples, the commenter cited four instances in which EPA commented on actions by other agencies and recommended the use of a modeling analysis to assess ozone impacts prior to authorizing oil and gas development projects. As supporting material, the comment includes quotations from and references to EPA letters to Federal Agencies on assessing impacts of oil and gas development projects.[18] WG questioned why EPA's recommendation for such an approach in its comments to other Federal Agencies did not result in its use of the same approach to evaluate the impacts from Idaho emissions and to insure compliance with Section 110(a)(2)(D)(i)(I). The commenter reasoned that the emissions that would result from the actions at issue in the other agency decisions, such as selected oil and gas drilling projects, would be of less magnitude and importance than the statewide emissions at issue in an evaluation under section 110(a)(2)(D).

EPA Response—As explained above, EPA disagrees with WG's fundamental argument that modeling is required to evaluate significant contribution to nonattainment, whether by section 110(a)(2)(D), by EPA guidance, or by past EPA precedent. EPA's applicable guidance made recommendations as to different approaches that can satisfy the interstate transport requirements for significant contribution to nonattainment in other states. Even EPA's own CAIR analysis relied on a combination of qualitative and quantitative analyses, as explained above. As indicated in our response to

[16] *See* UBAQS, p. 4–28.

[17] EPA most recently reviewed the adequacy of the Idaho monitoring network on October 14, 2010. See letter dated October 14, 2010 from Debra Suzuki, EPA Region 10, to Dave Broker, IDEQ.

[18] WG's October 13, 2010, comment letter, pp. 9–10. The referenced letters have been included in the docket for this action.

Comment No. 7, the CAIR analysis excluded the western states based on a qualitative assessment of the regions topography, geography and meteorology.[19]

EPA believes that the commenter's references to EPA statements commenting on the actions of other agencies are inapposite. As WG is aware, those comments were made in the context of the evaluation of the impacts of various federal actions pursuant to the National Environmental Policy Act (NEPA), not the Clean Air Act. As explained above, section 110(a)(2)(D) governs this particular decision-making process, and EPA does not agree that modeling is always required to support the evaluation. EPA itself has relied on qualitative evidence for this purpose when the relevant record provides evidence sufficient to reach a reasoned determination.

Comment No. 9—In further support of its argument that EPA should always require modeling to evaluate significant contribution to nonattainment, WG referred to EPA regulations governing nonattainment SIPs. The commenter referenced 40 CFR 51.112(a)(1), which states that: "[t]he adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in appendix W of [Part 51] (Guideline on Air Quality Models)." The commenter argued that this regulation supports its position that modeling is required to satisfy the significant contribution element of 110(a)(2)(D).

EPA Response—EPA disagrees with this comment. The cited language addresses the control strategy requirements when the necessity of controls has already been established. The cited provision requires a modeling analysis to demonstrate the adequacy of the control strategy developed to achieve the reductions necessary to prevent an area's air quality from continuing to violate the NAAQS. EPA's determination that emissions from Idaho do not contribute significantly to nonattainment for the 1997 8-hour ozone standard in any other states eliminates the need for a control strategy aimed at satisfying the section 110(a)(2)(D) requirements. The provision cited by the commenter, therefore, is inapplicable in this context. Moreover, EPA interprets the language at 40 CFR 51.112(a): "[e]ach plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements," to refer to modeling for attainment demonstrations, an integral part of nonattainment area SIPs under subchapter I, part D of the CAA. This interpretation was upheld by the Sixth Circuit Court of Appeals. *Wall* v. *U.S. EPA,* 265 F.3d 426, 436 (6th Cir. 2001). Thus, the commenter's cited regulation is not relevant to EPA's technical analysis assessing whether emissions from Idaho contribute significantly to nonattainment in any other states under section 110(a)(2)(D).

Comment No. 10—WG referenced several modeling analyses of emissions in the western United States which it contends renders EPA's analysis inadequate. The commenter "challenged" EPA to prove the modeling results it presented are insufficient by presenting a contrary modeling analysis, and argued that EPA has an obligation to do so.

Response: EPA disagrees with WG's contention that EPA is obligated to evaluate and disprove the modeling analyses it has submitted with a competing modeling analysis when other available information is available to dispute the modeling analysis. EPA's interpretation of section 110(a)(2)(D) is that the statute does not explicitly require modeling, and while modeling can be useful in certain circumstances, there is no obligation to use it to evaluate whether or not there is significant contribution to nonattainment. Section 110(a)(2)(D)(i) does not specify the forms of evidence to be used for meeting the requirements, and the 2006 Guidance specifically recommends other forms of information that states might wish to evaluate as part of their section 110(a)(2)(D) submissions. We evaluated whether Idaho's SIP met the requirement of section 110(a)(2)(D)(i) based on EPA's 2006 Guidance and have a reasonable basis, as discussed in the proposed approval, for concluding that Idaho has met the requirement of 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in the absence of a modeling analysis.

Comment No. 11—WG also objected to EPA's proposed approval of the Idaho submission on the grounds that it was based upon a "weight-of-evidence analysis," and that no such weight of evidence test appears in the CAA generally, or in section 110(a)(2)(D) in particular. According to the commenter, there is no regulatory support for using a "weight-of-evidence" approach to assessing air quality impacts. The commenter asserted that EPA neither cited nor quoted regulations or policy that provides for this, and failed to lend any specific meaning to the phrase through its proposed approval. Finally, the commenter asserted, without explaining, its belief that EPA failed to address "several relevant factors related to the determination of whether Idaho contributes significantly to nonattainment undermines the agency's reliance on any 'weight-of-evidence' approach."

EPA Response—EPA agrees with WG that neither the CAA generally, nor section 110(a)(2)(D) specifically, include the explicit phrase "weight of evidence." It simply does not follow, however, that it is inappropriate for EPA to use such an approach in this context. As explained above, section 110(a)(2)(D) does not explicitly stipulate how EPA may assess whether there is a significant contribution to nonattainment in other states. Through past actions such as CAIR, EPA has used a weight of evidence approach to exclude some states from further consideration.[20] As described above, in EPA's 2006 Guidance the Agency specifically recommended types of information that states might wish to rely upon to evaluate the presence of, and extent of, interstate transport for this purpose. EPA believes that a weight of evidence approach that properly considers appropriate evidence is sufficient to make a valid determination, as in this case.

Specifically, EPA's technical analysis in the September 13, 2010 proposed action underscores its reliance on implementation policies set in the EPA 2006 Guidance: "EPA's August 15, 2006, guidance to states concerning section 110(a)(2)(D)(i) recommended various methods by which states might evaluate whether or not its emissions significantly contribute to violations of the 1997 ozone standards in another state. Among other methods, EPA recommended consideration of available EPA modeling conducted in conjunction with CAIR, *or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state* [our emphasis]."[21] On the basis of this Guidance, Idaho and EPA chose to assess the impacts of emissions from Idaho sources on nonattainment areas for the 1997 ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in surrounding states through a weight of evidence approach

[19] 69 FR 4581, January 30, 2004.

[20] *See:* 69 FR 4581, January 30, 2004.

[21] 75 FR 55494, September 13, 2010.

using quantitative and qualitative information such as monitoring data for those other states, Idaho's distance from areas with monitors showing violation of the NAAQS, meteorological conditions, and other characteristics for those areas. EPA's use of a weight of evidence analysis is by no means unusual for the assessment of ozone impacts through long range transport. The same analytical framework was used in the 1998 NO_X SIP Call, as indicated under Section II.C., entitled "Weight-of-Evidence Determination of Covered States."[22] The differences between the specific types of evidence used in the NO_X SIP Call and in our analysis do not invalidate the use of the weight of evidence approach.

As for the commenter's argument that EPA "fails to lend any specific meaning to the phrase through its proposed approval," the Agency's technical analysis described in the proposal did specify the characteristics, including limitations, of a weight of evidence analysis: "[f]urthermore * * * EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to violations of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in another state." (75 FR 55496).

Finally, as to the commenter's assertion that EPA failed to consider "several relevant factors" and thus failed to conduct an appropriate weight of evidence evaluation, EPA cannot weigh the validity of this comment in the absence of an explanation of what these factors might be.

Comment No. 12—WG questioned whether a regulatory provision from Idaho's SIP, IDAPA 58.01.013.203.02, that was identified in the proposed action constitutes a "prohibition on emissions that significantly interfere with nonattainment."[23] WG argued that this provision does not appear to ensure compliance with section 110(a)(2)(D)(i)(I) because, the commenter explains, the provision applies only to stationary sources (actually point sources) and not to mobile or field burning emissions, and that all sources must be considered in order to meet the requirements of the statute. The commenter alleged that 110(a)(2)(D)(i)(II) applies to any source or other type of emission activity and, therefore, Idaho's SIP provision is inadequate if it is limited in its application to stationary sources. WG went on to identify emission inventory information to support its argument that mobile source emissions and agricultural burning emissions are significant sources of emissions in Idaho. The commenter questioned the assertion that the abovementioned regulatory provision provides authority to limit a source's emissions to ensure attainment in other states. WG also questioned how the provision would apply in attainment areas. Finally, the commenter concluded that the Idaho SIP does not appear to contain provisions that effectively prohibit emissions from any source from significantly contributing to nonattainment in any other state.

EPA Response—EPA agrees with the commenter's assertion that the requirements of section 110(a)(2)(D)(i)(I) are applicable to all source categories and not only to stationary sources. The commenter seems to have read EPA's proposed action to imply that the provisions cited by Idaho are the only consideration in evaluating whether Idaho has met the requirement regarding whether or not a state's emissions significantly contribute to violations of 1997 ozone and 1997 $PM_{2.5}$ standards in another state. In fact, these provisions, which provide IDEQ with the authority to require a permit if emission rate reductions are necessary to attain any ambient air quality standard, were identified by EPA in the proposed action as "additional support for [EPA's] conclusion that emissions from Idaho sources do not significantly contribute to nonattainment in any other state * * *." As noted in EPA's proposed action, no single piece of information was by itself dispositive in evaluating Idaho's potential contribution to nonattainment in another state. EPA has taken into account the Idaho SIP as a whole, which includes but is not limited to the cited permitting provisions, and the actual contribution of emissions from Idaho to nonattainment receptors in other states to evaluate whether the significant contribution element has been met.

EPA disagrees with the commenter's apparent view that under section 110(a)(2)(D) SIPs must contain literal provisions prohibiting significant contribution to nonattainment in any other state, or, for that matter, to contain any particular words or generic prohibitions. Instead, EPA believes that the statute requires a state's SIP to contain substantive emission limits or other provisions that in fact ensure that sources located within the state will not produce emissions that have such an effect in other states. In conducting its analysis of whether or not the state's SIP is adequate, EPA evaluates the actual contribution of a state's emissions to nonattainment in another state and does not base its analysis on the written provisions of the SIP alone. Therefore, EPA believes that satisfaction of the "significant contribution" requirement is not to be demonstrated through a literal requirement for a prohibition of the type advocated by the commenter.

EPA's past application of section 110(a)(2)(D) did not require the literal prohibition advocated by the commenter. For example, in 1998 NO_X SIP call (63 FR 57356, October 27, 1998) EPA indicated that "the term 'prohibit' means that SIPs must eliminate those amounts of emissions determined to contribute significantly to nonattainment * * *." As a result, the first step of the process to determine whether this statutory requirement is satisfied is the factual determination of whether a state's emissions contribute significantly to nonattainment in downwind areas. *See* 2005 CAIR Rule (70 FR 25162) and 1998 NO_X SIP Call (63 FR 57356). If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from Idaho, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's provisions. If, however, the evaluation reveals that there is such a significant contribution to nonattainment in other states, then EPA requires the state to adopt substantive provisions to eliminate those emissions. The state could achieve these reductions through traditional command and control programs, or at its own election, through participation in a cap and trade program. Thus, EPA's approach in this action is consistent with the Agency's interpretation of 110(a)(2)(D)(i) in the 2006 guidance, the CAIR Rule, and the NO_X SIP call, none of which required the *pro forma* literal "prohibition" of the type advocated by the commenter.

B. Comments Relating to the "Interfere With Maintenance" Element

Comment No. 1—The commenter stated that EPA inappropriately defined the term "interfere with maintenance." It argued that EPA's definition appeared to be "inappropriately conflated with the

[22] "As discussed above, EPA applied a multi-factor approach to identify the amounts of NO_X emissions that contribute significantly to nonattainment.* * *" 1998 SIP Call, 63 FR 57381, October 27, 1998.

[23] EPA notes that WG appears to have incorrectly stated and conflated the two different standards presented in CAA section 110(a)(2)(D)(i)(I) in this comment. EPA assumes that, due to the placement of this comment in a section that WG entitled "Measures in the SIP do not Appear to Ensure that Idaho will not Significantly Contribute to Nonattainment" and statements made later in the comment, that the comment applies only to EPA's proposed approval of the nonattainment prong of 110(a)(2)(D)(i)(I) and was not provided in reference to the maintenance prong.

definition of nonattainment." It argued that the definition of maintenance appeared to be tied to nonattainment, asserting that "unless an area has violated or is in violation of the NAAQS, the agency will not consider whether Idaho is interfering with that area's ability to maintain compliance with the NAAQS." For this reason, it argued EPA did not give independent meaning to the "interfere with maintenance" prong of section 110(a)(2)(D)(i)(I).

The commenter also maintains that EPA's analysis did not consider Idaho's impacts on neighboring states that have not previously violated, but that "may be barely attaining the NAAQS." To illustrate its contention that EPA has inappropriately defined "interference with maintenance," the commenter pointed to information regarding Cache Valley, Utah, which it describes as an example of an area that has not violated the 1997 24-hour $PM_{2.5}$ NAAQS, but that may be barely attaining the NAAQS and should, therefore, be classified as a maintenance receptor. The commenter did not provide any other concrete examples of areas that EPA should have identified as maintenance receptors.

Response—The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the DC Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008).[24] In that case, the court analyzed the definition of "interfere with maintenance" used in the CAIR rule. The court found that the definition EPA used "gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance." *North Carolina* at 910. It further reasoned that "[u]nder EPA's reading of the statute, a state can never "interfere with maintenance" unless EPA determines that at one point it "contribute[d] significantly to nonattainment." *Id.* Based on this analysis, the court found the definition unlawful holding that "[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the 'interfere with maintenance' language to identify upwind states that interfere with downwind maintenance, EPA unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference in 2010." *Id.* at 910–911.

The approach used by EPA to evaluate Idaho's SIP submission and to determine whether emissions from sources in Idaho interfere with maintenance in any other state directly addresses these flaws. It gives significant independent meaning to the term "interfere with maintenance." It establishes a process to identify any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. These receptors are referred to as maintenance receptors.

The methodology EPA used to identify maintenance receptors gives independent meaning to the term "interfere with maintenance" and establishes a process to identify projected attainment receptors that, based on the historic variability of air quality at that site (which may be due to variability in emissions and/or meteorology), may have difficulty maintaining the standard. As explained in greater detail below, the commenter's objection to EPA's approach appears to be based on the misconception that the methodology EPA used to identify maintenance sites was dependent on base year NAAQS violations.

The commenter's statement that EPA's designation of maintenance receptors is "firmly hitched to a finding that the maximum design value based on a single three-year period between 2003 and 2007 is in excess of the NAAQS" appears to be based on a misunderstanding of the methodology used by EPA to identify maintenance receptors. EPA's methodology did not, as the commenter appears to assume, require a site to have a design value above the NAAQS for one of the three base periods (2003–2005, 2004–2006, 2005–2007) to be considered a maintenance site. The methodology is based on an analysis of the future year average and future year maximum design values. It does not depend on whether the base year design values exceed the NAAQS. In the proposal, EPA explained that "EPA identified those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a single three-year period) that exceeds the NAAQS, as maintenance sites." (75 FR 52697). The maximum design value referenced in this sentence is the maximum *future* design value calculated using each of the three base design value periods separately. Whether or not one of the three base period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

To better understand this concept, it is useful to compare the methodologies used in the Transport Rule (TR) proposal (75 FR 45210, Aug. 2, 2010) to identify nonattainment and maintenance receptors. In the TR proposal, base period (2003–2007) ambient data were projected to the future (using model outputs), to identify both nonattainment and maintenance receptors. In both cases, receptors were identified by projected future design values; however, because more conservative data were used for the maintenance analysis, this analysis could identify receptors that were projected by the nonattainment analysis to be in attainment, yet might have difficulty attaining the standard due to historic variability of air quality at that site. To identify future nonattainment sites EPA calculated the future year design values by projecting the 5-year weighted average design value for each site. Only if this future year design value exceeded the NAAQS was the site considered to be a nonattainment receptor. However, to identify projected maintenance sites we used a different methodology that took into account historic variability in air quality at each receptor. For this approach EPA calculated the maximum future year design value by processing each of the three base design value periods (2003–2005, 2004–2006, and 2005–2007) separately. The highest of the three future values is the maximum design value, which is used to determine maintenance receptors.

In this way, EPA's analysis identifies those areas that are projected to be attainment, but may have difficulty maintaining attainment of the standard, for example in a year with particularly severe meteorology (weather that is conducive to ozone and/or particulate formation). In other words, this analysis does exactly what the DC Circuit directed EPA to do in *North Carolina,* 531 F.3d 896. It gave independent meaning to the "interfere with maintenance" prong of 110(a)(2)(D)(i) and is providing protection to any areas that, although they are predicted to attain the standard (and thus upwind sources could not be found to significantly contribute to nonattainment in that area) may have

[24] As EPA noted in the proposal, the term "interfere with maintenance" is not defined in the CAA. As such, the term is ambiguous and EPA's interpretation of that term in this action is both reasonable and consistent with the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts of this action.

difficulty maintaining the standard. North Carolina. at 911.

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating Idaho's SIP submission. For the reasons explained above, this approach is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina.*

As explained above, EPA established a methodology to identify sites that may have difficulty maintaining the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS. This process identifies any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. Based on this methodology, EPA projected that the Cache Valley in Utah will not have difficulty meeting the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS because none of the future year design values exceeded the NAAQS and Cache Valley is not a maintenance receptor.

EPA notes that, except for Cache Valley, Utah, the commenter provides no specific examples or facts to support its arguments that there are areas in neighboring states which are "barely attaining the NAAQS." In the absence of any specific comments regarding the location of monitoring receptors, monitoring concentrations, or time periods during which these areas were purportedly "barely attaining" the NAAQS, EPA cannot respond to the commenter's generic concerns about interference with maintenance in the neighboring states of Montana, Nevada, Oregon, Montana, Wyoming, and other areas of Utah. EPA's analysis shows that there are no sites in any states adjacent to Idaho with design values exceeding the 65 ug/m^3 which should accordingly be identified as maintenance receptors.

WG provided only the example of Cache Valley, Utah, as an area that EPA should have identified as a maintenance receptor. The commenter appears to implicitly argue that EPA has inappropriately established an interference with maintenance threshold, although it did not identify specific criteria that should warrant designating an area as a maintenance receptor. Even if EPA did not rely on the methodology discussed above to give meaning to the "interfere with maintenance" prong of section 110(a)(2)(D), the commenter's argument that Cache County is "barely attaining" the NAAQS is not persuasive. The data pointed to by the commenter is not sufficient to support a reasonable conclusion that the area warrants evaluation as a maintenance receptor. The commenter identified the four highest monitored values for $PM_{2.5}$ at the Cache County monitor for each year from 2005 through 2010. However, EPA's regulations establish that attainment of the $PM_{2.5}$ NAAQS is determined when the three-year average of the 98th percentile value at each monitoring site is less than or equal to 65 μg/m^3. The 98th percentile value for Cache County cannot be evaluated by considering only the four highest monitored readings during each of the years cited by the commenter. In fact, all of the values cited by the commenter would be eliminated from consideration in an attainment analysis. EPA concludes that this data is not sufficiently persuasive to warrant identifying Cache County as a maintenance receptor.

Although the commenter did not provide a full data set in its comments, EPA has analyzed a complete data set for the Cache County monitor and determined that the highest three year-average of the 98th percentile for the monitor is only 66% of the standard. EPA computed the highest 3-year average of the 98th percentile values for each of the three-year periods covered by the 2005–2010 period that the commenter references. The highest value for any complete three-year periods was 42 μg/m^3, well below 65 μg/m^3. EPA disagrees with the commenter's conclusion that there is a reasonable basis for characterizing this area as "barely attaining" the NAAQS or one that warrants additional evaluation as a maintenance receptor.

Comment No. 2—The commenter cited a variety of information suggesting that receptors in the Denver/North Front Range (Denver/NFR) area should also be considered for maintenance purposes under 110(a)(2)(D)(i) in this action. The commenter points out that as EPA itself has stated that "Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of {0.085} and 0.086 ppm, respectively)." The commenter also argued that modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration shows that by 2010, the three-year design value is only projected to be lowered to 0.084 parts per million, barely in compliance with the NAAQS, and that certain portions of the Denver/NFR area of Colorado would violate the 1997 ozone NAAQS in 2010 at grid cells west of Fort Collins. The commenter referenced several documents that are part of the Colorado's Denver/NFR 8-hour Ozone Attainment Demonstration in support of its arguments. The commenter cited the report's language that indicated that the modeling projection of a value above the 1997 8-hour standard to the west of Fort Collins is not "implausible" explaining, "[i]n the case of the Denver ozone modeling, higher ozone concentrations are estimated west of Fort Collins than at the locations of the two monitors in Fort Collins on some days and this does not appear to be an error in the modeling system".[25]

The commenter argued that EPA's failure to consider the Denver/NFR area as a receptor for evaluating interference with maintenance in this action reflects the very problem that the DC Circuit warned could result without giving independent meaning to the term "interfere with maintenance."

Response—EPA disagrees with the commenter's argument that EPA has inappropriately identified the correct monitors for maintenance receptors. As discussed in greater detail in the previous response to comment, EPA has selected a method that identifies maintenance receptors separately from nonattainment receptors and gives an independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i). EPA has consistently applied this method to all potential receptors in states potentially impacted by Idaho's emissions including those in the Denver/NFR area.

The commenter's argument that EPA did not consistently identify maintenance receptors is premised on the same fundamental misunderstanding (discussed in the previous response to comment addressing the "interfere with maintenance" prong) that EPA's identification of nonattainment receptors was based on current or past NAAQS violations. As explained above, this is not correct. EPA did not base its identification of maintenance receptors on an analysis of whether air quality at those receptors exceeded the NAAQS in the base years. The methodology EPA used to identify maintenance areas takes into account historic variability of emissions at specific monitoring sites to analyze whether or not monitoring sites projected to be in attainment in 2012 will nonetheless remain at risk of slipping into nonattainment in that year. The commenter provided a number of modeling or monitoring analyses for

[25] Commenter referenced the Colorado Department of Public Health and Environment's "2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan Control Strategy" and the Environ modeling report "Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan"

2010 or earlier. As we have addressed in responses elsewhere in this notice, EPA continues to believe 2012 is the appropriate year for this analysis. Thus, modeling or monitoring data for other years is not directly relevant to this rulemaking. Nonetheless, below we address the commenter's specific assertions about the modeling.

The commenter asserts that monitoring data for 2005–07 and 2006–08 for the Rocky Flats North monitor reflect violations of the 8-hour NAAQS and therefore EPA should consider this Rocky Flats North monitor as a "maintenance receptor." The commenter further cites to modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration to support its assertion that EPA has applied inconsistently its definition of interference with maintenance. The modeling data referenced by the commenter, however, only identifies monitors that, in the commenter's view, are at risk of being in nonattainment or having maintenance problems in 2010. The monitoring data cited indicates high ozone levels in the past. The underlying issue raised is thus substantively the same as that raised in Comment No. 3 below which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present or in the past. EPA's response to Comment No. 3 below, illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the D.C. Circuit decision in *North Carolina* v. *EPA.*

EPA's method is based on model projection values that take into account multi-year variability in ozone data at specific monitors. For identification of maintenance receptors, EPA utilized the monitoring data from the 2003–2007 period to calculate 2012 future year modeling design value projections. The 2003–07 period includes three Design Value (DV) periods (2003–2005, 2004–2006, and 2005–2007). The 2012 future year DVs were calculated by multiplying a 3-year DV (base year) by the ratio of the Future Year average of the daily 8-hour ozone maximums around a monitor over the Base Year average of the daily 8-hour ozone maximums around a monitor. This calculation was performed for each of the three 3-year DVs (2003–2005, 2004–2006, and 2005–2007). This approach yielded three different projected 2012 design values and thus, tests for variability in meteorology. If any of the three 2012 projections was above the 1997 ozone standard, then the receptor would be considered a maintenance receptor. None of the 2012 projections for the Denver/NFR area was above the standard so the area was not considered a maintenance area. This approach was the same as the approach used for every potential receptor evaluated. It is worth noting that EPA's analysis included the 2005–2007 data for the Rocky Flats monitor (which is one of the highest monitored DVs in recent years for this monitor) that the commenter raised as a concern and pursuant to its methodology as previously described EPA's analysis determined that the Rocky Flats monitor would not be a maintenance receptor in 2012.

Further, EPA disagrees with commenter's conclusion that the modeling performed for the Denver/NFR attainment demonstration with the 2010 model projections establishes that any of the areas identified will have maintenance problems for the 1997 8-hour ozone NAAQS. We disagree with the commenter's conclusion that the Denver/NFR area monitors should be identified as "maintenance receptors" in large part because he bases his conclusion on projections for 2010 instead of 2012. This modeling used projections for 2010 not 2012, which as explained above and in response to Comment No. 3 below is not the correct year for comparison, given the approach EPA has developed for determining maintenance receptors. EPA's analysis of maintenance receptors, which is based on the approach developed in the Transport Rule Proposal to be consistent with the DC Circuit's opinion in *North Carolina* v. *EPA* and uses projections for 2012, did not identify any maintenance receptors in the Denver/NFR area. This conclusion is consistent with evidence suggesting emissions are likely to trend downward (for example, with two more years of fleet turnover, this modeling would likely have projected lower levels of ozone in 2012) and preliminary monitoring data for 2010, which indicates that the Denver/NFR area is meeting the 1997 ozone standard. Further, EPA has reviewed Colorado's attainment demonstration for the Denver/NFR area and proposed that the combination of the modeling and weight of evidence analyses demonstrates that Denver will be in attainment in 2010.[26] [27]

In addition, the commenter's concern that an area west of Fort Collins, might exceed 84 ppb in 2010 is based on exceedance values in the Colorado modeling analysis from a special analysis, called the Unmonitored Area Analysis (UAA), that is recommended for model grid cells that are not analyzed in the monitor based attainment demonstration because they are not located near a monitor. EPA does not believe that the UAA establishes that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i).

First, the UAA analysis is for 2010, which as noted above is not the correct analysis year. Second, EPA guidance indicates that NAAQS violations in the UAA should be handled on a case by case basis.[28] The guidance stresses that due to the lack of measured data, the examination of ozone concentrations as part of the unmonitored area analysis is more uncertain than the monitor based attainment test. This is true even in situations such as this where, as the commenter points out, no known errors were identified by the contractor in the modeling analysis. As a result, the UAA results are recommended to be treated as a separate test from the monitor based attainment test with less weight put on the conclusions of the UAA analysis. EPA's attainment demonstration guidance indicates "[w]hile it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor based test, the same requirements may not be appropriate in unmonitored areas." [29] The guidance recommends that it may be appropriate to deploy additional monitors in an area where the unmonitored analysis indicates a potential future year violation.

To address the concerns raised by the UAA, Colorado installed an additional ozone monitor in the area West of Fort Collins to determine whether the model predicted ozone concentrations are, in fact, valid. The special purpose monitor, located in Rist Canyon, began operation on May 14, 2009. The Rist Canyon monitoring station has collected data for two ozone seasons (approximately 16 months) since it began operating and the fourth highest daily maximum 8-hour average ozone concentration reading is 69 ppb for May through December of

[26] EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze," EPA–454/B–07–002, April 2007.

[27] 75 **Federal Register** 40 CFR part 52 [EPA–R08–OAR–2010–0285; FRL–9177–2], Proposed Rule, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions"; pages 42346–42361.

[28] *Id.*

[29] *Id.,* page 32.

2009 and 72 ppb for January through August 2010.[30]

Therefore, EPA does not believe the modeling performed for the State of Colorado's Denver/NFR area SIP can support the conclusion that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i). The methodology developed to identify maintenance receptors for the purpose of analyzing interference with maintenance with respect to the 1997 ozone and $PM_{2.5}$ NAAQS relies on base period monitoring data to identify monitor locations that are projected to have maintenance problems in 2012. The methodology does not identify receptors based on modeling data alone. While the monitor has not operated long enough to account for variability in ozone levels, the newly installed monitor in the relevant area is reading well below the standard and this fact further confirms that the modeling results and the UAA results do not support the conclusion that receptors in the Denver/NFR area should be considered maintenance receptors for the purpose of CAA section 110(2)(D)(i).

In conclusion, EPA disagrees with the commenter. We have used a fully consistent approach in identifying areas that may have difficulty in maintaining attainment of the NAAQS. It is these areas that we have further evaluated to see if Idaho's emissions would interfere with maintenance of the NAAQS.

Comment No. 3—The commenter also argued that EPA's analysis ignores whether emissions from Idaho sources are at present interfering with maintenance in other states. The commenter argued that EPA erred by considering only whether Idaho emissions will interfere with maintenance of the NAAQS in 2012 at monitors that would then be considered "maintenance receptors." It argues that this approach is inconsistent with the approach taken to determine whether Idaho significantly contributes to nonattainment in other states. The commenter agreed that "EPA should ensure that Idaho does not interfere with maintenance or contribute significantly to nonattainment in other states in the future," but argued that "the agency's duties under Section 110(a)(2)(D)(i) apply both in the present and the future." In short, the commenter argued that EPA's approach is flawed simply because EPA evaluated whether or not there is significant contribution to nonattainment in other states looking at current data, whereas EPA evaluated whether there is interference with maintenance looking at future projected data.

Response: EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(I)(i) of the Clean Air Act requires states to submit SIPs within 3 years of promulgation or revision of a NAAQS that:

> (D) contain adequate provisions—
>
> (i) prohibiting * * * any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—
>
> (I) contribute significantly to nonattainment or, interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
>
> (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

In determining the appropriate year to analyze in determining whether emissions from Idaho will interfere with maintenance by any other State, EPA used an approach upheld by the DC Circuit in *North Carolina* v. *EPA.* In that case, the court examined EPA's definition of "will" in "will contribute significantly." The placement of the word "will" at the end of section 110(a)(2)(D)(i) clarifies that it applies to all of the provisions that follow—both those in 110(a)(2)(D)(i)(I) and those in 110(a)(2)(D)(i)(II). Thus the DC Circuit's discussion of the meaning of the word "will" in "will significantly contribute" also applies to the meaning of the word "will" in "will * * * interfere with maintenance."

In *North Carolina* v. *EPA,* the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like the commenter argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated, even though those areas were projected to come into attainment by the year selected for the future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NO_X SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

Contrary to the assertions of the commenter, EPA believes that evaluation of interference with maintenance using a future date is the most appropriate approach for that requirement. As explained in the proposed action, the court decision affecting the CAIR rule required EPA to reevaluate its approach to the interfere with maintenance requirement of section 110(a)(2)(D) and to develop a new approach to give that requirement separate meaning. In doing so, EPA has developed an approach that necessarily requires a number of years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time, in this instance 2012. It is reasonable and appropriate for EPA to use, in this rulemaking, the current approach to identifying maintenance receptors for purposes of section 110(a)(2)(D) that EPA developed to be consistent with the direction given to EPA in *North Carolina* v. *EPA.*

Finally, EPA notes that the text of section 110(a)(2)(D)(i) does not explicitly specify how to evaluate the existence of, or extent of, interstate transport and whether that interstate transport is of sufficient magnitude to significantly contribute to nonattainment or interfere with maintenance as a regulatory matter. The statutory language is ambiguous on its face and EPA must reasonably interpret that language when it applies it to factual situations before the Agency. EPA's 2006 Guidance explicitly stated our view that the "precise nature and contents of such a submission [are] not stipulated in the statute" and that the contents of the SIP submission "may vary depending upon the facts and circumstances related to the specific NAAQS." Moreover, within that Guidance, EPA expressed its view that "the data and analytical tools available" at the time of the SIP submission "necessarily affect * * * the content of the required submission." As discussed above in response to comments regarding the "significant contribution to nonattainment" element, the state's submittal and EPA's evaluation of that submittal were consistent with the 2006

[30] The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR part 58 appendix A. Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (*see* 40 CFR part 50, appendix D).

Guidance and considered the type of information (such as monitoring data in Idaho and downwind states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states) that EPA recommended as relevant for evaluating that element. EPA's approach to evaluating whether Idaho's emissions significantly contribute to nonattainment in another state is consistent with the 2006 Guidance and is a reasonable interpretation of section 110(a)(2)(D)(i).

Just as EPA has used the best available information to make its determination regarding Idaho's potential interference with maintenance in another state, it has developed and applied a methodology to evaluate whether Idaho's emissions potentially contribute significantly to nonattainment of the NAAQS in another state that is based upon consideration of information that is consistent with the 2006 Guidance, past EPA analyses of significant contribution, and reasonably appropriate for that purpose. As was explained in the proposed action and in this final action's response to comments pertaining to the "significant contribution to nonattainment" analysis above, section 110(a)(2)(D) is ambiguous with regard to the methods and standards applicable to a significant contribution to nonattainment determination. Therefore, EPA must interpret those provisions, and the Agency's interpretation is subject to judicial deference so long as it is a reasonable construction of the statute. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.,* 467 U.S. 837. EPA does not agree with the commenter's contention that EPA's approach to the "interference with maintenance" and "significant contribution to nonattainment" prongs of section 110(a)(2)(D) are flawed. Rather, each analysis is based upon the best available information and is a reasonable interpretation and application of the statute's requirements.

C. Comment Relating to Section 110(l)

Comment No. 1—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from Idaho because the state and EPA did not comply with section 110(l). The commenter argues that a section 110(l) analysis must consider all NAAQS once they are promulgated, and that EPA's analysis under section 110(l) was inadequate.

EPA Response—EPA agrees that a required section 110(l) analysis must consider the potential impact of a proposed SIP revision on attainment and maintenance of all NAAQS that are in effect and impacted by a given SIP revision. However, EPA disagrees that it failed to comply with the requirements of section 110(l) or that section 110(l) requires disapproval of the SIP submission at issue here.

Section 110(l) provides in part that: "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter." EPA has consistently interpreted Section 110(l) as not requiring a new attainment demonstration for every SIP submission. EPA has further concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will prevent interference with the states' obligations to develop timely attainment demonstrations. 70 FR 58134, 58199 (October 5, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 53, 57 (January 3, 2005); 70 FR 28429, 28431 (May 18, 2005).

Idaho's submission is the initial submission by the state to address for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS the first three elements of section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment in any other state, (2) interference with maintenance by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality. This submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of the Idaho interstate transport SIP will not interfere with attainment or maintenance of any NAAQS.

The commenter did not provide any specific basis for concluding that approval of this SIP submission would interfere with attainment or maintenance of a NAAQS, or with any other applicable requirement of the Clean Air Act. EPA concludes that approval of the submission will not make the status quo air quality worse, and is in fact consistent with the development of an overall plan capable of meeting the Act's attainment requirements. Accordingly, EPA finds that approval of the submission is consistent with the requirements of section 110(l).

IV. Final Action

EPA is approving revisions to the Idaho SIP, submitted on June 28, 2010, which adequately demonstrate that for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, air pollutant emissions from sources within Idaho do not (1) significantly contribute to nonattainment of the NAAQS in any other state or (2) interfere with maintenance of the NAAQS by any other state. EPA is also approving the provisions in the Idaho SIP relating to interference with any other state's required measures to prevent significant deterioration. In its September 13, 2010, proposal (75 FR 55494), EPA proposed to approve Idaho's SIP as adequate for purposes of meeting the requirements of section 110(a)(2)(D)(i)(II) contingent upon EPA taking final action to approve revisions to Idaho's PSD requirements that were consistent with our proposed action on these PSD requirements on March 18, 2010. 75 FR 13058. We received no comments on this proposed contingent approval. EPA's Region 10 Regional Administrator signed the final approval of the PSD program revisions on November 10, 2010. These approved provisions ensure that there will be no interference with any other state's required PSD measures because Idaho's SIP meets current CAA requirements for PSD.

In conclusion, EPA is approving revisions to the Idaho SIP, submitted on June 28, 2010, because they adequately demonstrate that for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, air pollutant emissions from sources within Idaho do not (1) significantly contribute to nonattainment of the NAAQS in any other state, (2) interfere with maintenance of the NAAQS by any other state, and (3) interfere with any other state's required measures to prevent significant deterioration of its air quality, as required by section 110(a)(2)(D)(i).

As noted previously, EPA will address element (4), interference with any other state's required measures to protect visibility, in a separate action. EPA will also take action on the portion of Idaho's SIP that addresses the 2006 $PM_{2.5}$ NAAQS in a separate action.

V. Scope of Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as

defined in 18 U.S.C. 1151.[31] Therefore, EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

VI. 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. The table in § 52.670(e) entitled "EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures" is amended by adding an entry to the end to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

[31] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* *	*	*	*	* *
Interstate Transport State Implementation Plan, May 11, 2010 (see comments).	State-wide	06/28/2010	11/26/2010 [Insert page number where the document begins]	For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. See docket EPA–R10–OAR–2010–0669.

[FR Doc. 2010–29626 Filed 11–24–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0482; FRL–9231–1]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving numerous revisions to the Idaho State Implementation Plan that were submitted to EPA by the State of Idaho on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is taking no action in this rulemaking on a number of submitted rule revisions that are unrelated to the purposes of the implementation plan.

DATES: This action is effective on December 27, 2010.

ADDRESSES: Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–6706.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Background for This Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit State Implementation Plans (SIPs) to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. On May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009, the Idaho Department of Environmental Quality (IDEQ) submitted numerous revisions to the SIP for the State of Idaho. On March 18, 2010, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except the identified provisions on which EPA proposed to take no action. 75 FR 13058. This final action will update the federally approved SIP to reflect changes to the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) that were made by IDEQ and reviewed and deemed approvable into the Idaho SIP (Code of Federal Regulations part 52, subpart N).

A. What revisions to the Idaho SIP does this action address?

Table 1 below identifies each SIP submittal addressed in this action, including the submittal date, title and sections of IDAPA 58.01.01 that are revised. The submittals include Idaho's annual incorporation by reference of various portions of the Code of Federal Regulations (CFR), revised new source review (NSR) requirements, revised permit to construct exemptions, updates and clarifications to the State's permitting program, revisions related to the definition of "regulated air pollutant," modified definitions for the State's major and minor source permitting programs, procedures for transferring permits, clarifications to sulfur content of fuels provisions, and various editorial changes. The submittals also included provisions we are taking no action on, including an electric generating unit construction prohibition, demonstration of preconstruction compliance with toxic standards, permit fee provisions, appeal provisions, provisions relating to Tier 1 operating permits, facility emissions cap, standards of performance of certain types of waste incinerators, and various definition revisions. More information about each SIP submittal, including a summary of the submittal and relevant background information and analysis supporting our action, can be found in our proposed approval. 75 FR 13058 (March 18, 2010).

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
05/22/2003 [1]	Soil Vapor Extraction (58–0101–0102)	58.01.01.210.
	2001 IBR of Federal Regulations (58–0101–0103)	58.01.01.008 and 107.
	Hospital/Medical/Infectious Waste Incinerators (58–0101–0103).	58.01.01.861.

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION—Continued

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
	Permit Clarification (58–0101–0202)	58.01.01.209, 213, 228, 313, 317, 395, 410, 511, 581, 700 and 710–724.
	2002 IBR of Federal Regulations (58–0101–0202)	58.01.01.008 and 107.
	Permitting Fees (58–0101–0104)	58.01.01.01.006, 007, 200–202, 209, 224–228, 400–402, 404, 407–410, 470, 800–802.
	Title V Operating Permit Fees (58–0101–0203)	58.01.01.387–399.
04/02/2004	2003 IBR of Federal Regulations (58–0101–0301)	58.01.01.008 and 107.
07/13/2005	New Source Review (58–0101–0304)	58.01.01.006, 200, 202, 204, 205, 206, 209, 225 and 401.
	Permit To Construct Exemptions (58–0101–0401)	58.01.01.220 and 222.
	2004 IBR of Federal Regulations (58–0101–0402)	58.01.01.008, 107, 200, 204 and 205.
05/05/2006 [2]	Regulated Air Pollutants (58–0101–0503)	58.01.01.006–008, 133–135, 155, 213, 220, 440–442, 460, 511–513, 560–561, 575, 581, and 679.
	2005 IBR of Federal Regulations (58–0101–0505)	58.01.01.008, 107, 200, 204 and 205.
	Procedure for Transfer of Permit To Construct and Tier II permits (58–0101–0506).	58.01.01.006, 007, 209, and 404.
	Permit To Construct Exemptions (58–0101–0507)	58.01.01.222.
04/16/2007	2006 IBR of Federal Regulations (58–0101–0602)	58.01.01.008, 107, 200, 204, 205.
	Mercury (58–0101–0603)	58.01.01.199.
05/12/2008	2007 IBR of Federal Regulations (58–0101–0701)	58.01.01.008, 107, 200, 204, 205.
06/08/2009 [1]	Sulfur Content of Fuels (58–0101–0703)	58.01.01.725.
	2008 IBR of Federal Rules (58–0101–0802)	58.01.01.008 and 107.

[1] The May 22, 2003 and June 8, 2009 SIP submittals included IDEQ SIP revisions for the control of nonmetallic mineral processing plants (IDEQ Docket 58–0101–0002 and a portion of Docket 58–0101–0802), which will be acted on in a separate action.

[2] The May 6, 2006 submittal included IDEQ's SIP revision for the facility emissions cap (IDEQ Docket 58–0101–0508) which will be acted on in a separate action.

B. What comments did we receive on our proposal for these revisions?

National Resource Defense Council (NRDC) commented on EPA's proposal to approve changes to Idaho's permitting programs for major stationary sources, specifically the prevention of significant deterioration (PSD) permit program and the nonattainment area (Part D) permit program that incorporate EPA's "2002 NSR Reform Rules." NRDC primarily commented on the requirements of the Federal NSR rules, not Idaho's application of the Federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's promulgation of the 2002 NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the DC Circuit Court. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). NRDC's comments in this action, including exhibits, do not raise any specific concerns with Idaho's rules, but rather, reiterate arguments made by NRDC to the DC Circuit regarding Sections 110(l) and 193 of the Clean Air Act.[1]

Although NRDC's comments provide citations to nine sections of the Idaho rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." NRDC Comments at 2. The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1 and 11–12. The 31 exhibits appear to all be related to the DC Circuit Court case *New York* v. *EPA,* and were either submitted to that Court for review, or are relevant to that adjudication. In any event, none of the 31 exhibits provides EPA with any comments specific to the Idaho rules at issue. Despite the lack of Idaho-specific discussion in NRDC's letter, EPA has responded to the few comments that appear related to the March 18, 2010, proposal to approve Idaho's SIP revisions pertaining to EPA's 2002 NSR Reform Rules.

1. Section 110(l)

a. *Summary of comments regarding Section 110(l):*

NRDC asserts that "[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York* v. *EPA* [citation omitted] allow previously-prohibited emissions-increases to occur." NRDC Comments at 4. As a result, NRDC states that, "it cannot be said of Idaho's plan that it 'will cause no degradation of air quality' " and "Idaho has made no 'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.' " NRDC Comments at 5. Further, NRDC states that "EPA has never made, or even proposed to make, a finding that revisions to Idaho's permit provisions so that they track the non-vacated provisions of the 2002 rule 'will cause no degradation of air quality' [citations omitted] or avoid 'interfering with any applicable requirements concerning attainment and reasonable further progress toward attainment of the [NAAQS], or any other applicable requirement of the Act," and that "EPA fails to even cite CAA Section 110(l) in the proposal." NRDC Comments at 5. Finally, NRDC concludes that "finalizing the EPA rulemaking proposal at issue here would violate section 110(l) of the Act." NRDC Comments at 5.

b. *EPA response to Section 110(l)-related comments:*

EPA's 2002 NSR Reform Rules were upheld by the DC Circuit Court which

[1] NRDC notes that, "[t]he 2002 rule provisions considered by the DC Circuit in *New York* v. *EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state's versions of any of the 2002 rule provisions consistently with section 110(1) of the Act.'' NRDC Comments at 4. The Idaho rules at issue here track the federally approved rules, as upheld by the DC Circuit (which NRDC admits—NRDC Comments at 4–5) and NRDC supported all its comments with information related to the challenge of EPA's 2002 NSR Reform Rules. NRDC provided no Idaho-specific suppport for its comments.

reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in the 2002 NSR Reform Rules that were upheld by the DC Circuit were (1) plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explains, "The EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits." Supplemental Analysis at 6. EPA further explained that,

> Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA's analysis of PALs and anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that, "The EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program." Supplemental Analysis at 13. This is mainly because "the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible." Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, "we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent." Supplemental Analysis at 14 (*see also* Supplemental Analysis Appendix G).[2]

Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter." Clean Air Act, 42 U.S.C. 7410(l). In "Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management," 69 FR 54006 (September 7, 2004), the EPA stated that Section 110(l) does not preclude SIP relaxations. The Agency stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress," and that, therefore, a state can relax its SIP provisions if it is able to show that it can "attain or maintain the [National Ambient Air Quality Standards (NAAQS)] and meet any applicable reasonable further progress goals or other specific requirements." 69 FR at 54011–12.

As the commenter acknowledges, the Idaho PSD/NSR rules track the Federal 2002 NSR Reform Rules. EPA did evaluate Idaho's rules consistent with its evaluation of the Federal rules, and determined that Idaho's rules were equivalent to the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Idaho's PSD/NSR rules will be consistent with EPA's position on the Federal 2002 NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress when the 2002 NSR Reform Rules are compared to the pre-reform provisions. EPA's analysis for the environmental impacts of these three components of the 2002 NSR Reform Rules is informative of how Idaho's adoption of NSR Reform (based on the Federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the 2002 NSR Reform Rules, and, thus, approval of Idaho's SIP revision would not be contrary to Section 110(l) of the CAA.

As discussed above, NRDC cites to nine general sections of Idaho's rules as provisions that would violate Section 110(l).[3] Without further specificity, however, it is not clear why or how NRDC believes approval of these provisions would violate Section 110(l). Moreover, NRDC has provided no Idaho-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of the 2002 NSR Reform Rules, in the Supplemental Analysis, are not applicable to Idaho's rules which mirror the Federal rules.

EPA evaluated Idaho's rules in comparison with the existing Federal rules, and determined that Idaho's rules were equivalent to the 2002 NSR Reform (Federal) Rules. EPA also considered the Supplemental Analysis in reviewing NRDC's comments. EPA concluded that approval of Idaho's SIP revision would not be contrary to Section 110(l) of the CAA because they implement Federal provisions. This comparison was discussed in the proposal to approve Idaho's SIP revision. Absent more explicit information demonstrating that Idaho's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the Clean Air Act and thus should be disapproved under Section 110(l), Idaho's SIP submission and the Supplemental Analysis support approval and there is no basis to determine that approval of Idaho's rules would violate Section 110(l).

Although NRDC has not identified the specific provisions within these sections in Idaho's submittal that they contend prevent the State's revised plan from meeting the criteria in Section 110(l), EPA presumes that NRDC is referring to

[2] For more information on the 2002 NSR Reform Rules, and its supporting technical documents, *see http://www.epa.gov/nsr/actions.html#2002* (last visited November 21, 2008).

[3] While NRDC has not identified the specific provisions within these sections in Idaho's submittal that they contend prevent the State's revised plan from meeting the criteria in Section 110(l), by its many references to EPA's 2002 NSR Reform Rules, EPA presumes that NRDC is referring to the changes to the applicability provisions for determining when modifications to existing major stationary sources are subject to review (*i.e.,* when a major modification would occur). The responses to NRDC's comments that follow are based on that presumption.

the changes to the applicability provisions for determining when modifications to existing major stationary sources are subject to review (*i.e.,* when a major modification would occur) because those provisions of the 2002 NSR Reform Rules differ most from PSD and Part D NSR rules currently approved in the Idaho SIP. With respect to major modifications, IDEQ has informed EPA that it issued only one PSD permit for a major modification in the ten years prior to adopting the 2002 NSR Reform Rules and has not issued a PSD permit for a major modification in the five years since adopting the NSR Reform changes. Given this permitting record, EPA does not believe that there is any evidence that the change to the major modification applicability provisions in the Idaho SIP resulting from Idaho's adoption of the 2002 NSR Reform Rules would interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the CAA.

In addition, EPA does not believe that the change to the definition of major modification has interfered, or will interfere, with Idaho's ability to ensure reasonable further progress in any nonattainment area. Of the five areas in Idaho that were designated nonattainment in response to the 1990 Clean Air Act Amendments, all five have now attained the applicable NAAQS. Three have been formally redesignated to attainment, two before and one after Idaho revised its NSR rules (Boise-Ada County CO, 67 FR 65713 (October 28, 2002; eff. December 27, 2002); Ada County (Boise) PM10, 68 FR 61106 (October 27, 2003, eff. November 26, 2003); and Portneuf Valley (Pocatello) PM10, 71 FR 39574 (July 13, 2006, eff. August 14, 2006)). Two have been determined to have attained the applicable NAAQS, one before and one after Idaho revised its NSR rules (Pinehurst (Shoshone County) PM10, 66 FR 44304 (August 23, 2001, eff. October 22, 2001) and Sandpoint PM10, 75 FR 35302 (June 22, 2010, eff. August 23, 2010)). Since all nonattainment areas have successfully attained the NAAQS, some before and some after the revision to the NSR rules, EPA finds no basis to conclude that the change to the rules would interfere with Idaho's ability to ensure reasonable further progress in any nonattainment area. There are no existing major sources of PM2.5 or PM2.5 precursors in the newly designated Franklin County (Cache Valley) PM2.5 nonattainment area, so the change to the Part D NSR rule will not affect Idaho's ability to ensure reasonable further progress when it develops and submits the attainment plan for that newly designated area.

Moreover, although NRDC acknowledges that "110(l) requires * * * a determination that the specific revision, *when considered in the context of the SIP elements already in place,* can meet the Act's attainment requirements," (citing *Hall* v. *EPA,* 273 F.3d 1146, 1152, 1159 (9th Cir. 2001) (emphasis added), NRDC's comments fail to consider the other permitting rules in the Idaho SIP along with the revisions to those rules that EPA is proposing to approve in this action. The Idaho SIP includes a single "permit to construct" program (IDAPA 58.01.01.200 through 228) that includes requirements for the construction and modification of stationary sources, including major stationary sources in nonattainment areas (IDAPA 58.01.01.204) and attainment or unclassifiable areas (IDAPA 58.01.01.205). Importantly, the Idaho rules require that changes to existing major stationary sources that are not subject to review under the provisions for major sources are subject to the nonmajor source requirements of IDAPA 58.01.01.200 through 228 (see IDAPA 58.01.01.204.03 and 58.01.01.205.04). The nonmajor source requirements include the requirement that no permit to construct shall be granted unless the applicant shows that the stationary source or modification would not cause or significantly contribute to a violation of any ambient air quality standard (IDAPA 58.01.01.203.02). Thus, changes at existing major stationary sources that would have undergone review as major modifications under Idaho's existing PSD SIP but now may not be reviewed as major modifications under Idaho's adoption of the 2002 NSR Reform Rules must still undergo review as nonmajor changes and cannot be constructed if they would cause or significantly contribute to a violation of the NAAQS. Idaho's nonmajor new source review requirements provide additional assurance that Idaho's adoption of the 2002 NSR Reform rules will not interfere with the Idaho SIP's ability to attain and maintain the NAAQS, and the commenter has provided no information to the contrary.

2. Section 193

a. *Summary of comments regarding Section 193:*

NRDC states that NSR is a "control requirement" and thus the requirements of Section 193 apply to the NSR rules at issue in the Idaho SIP revision. NRDC Comments at 8. NRDC further alleges that Idaho's revisions "ensure that emissions will not be reduced as much as under the preexisting rules. In fact, the modifications allow emissions to increase in Idaho's nonattainment areas." NRDC Comments at 9. Finally, NRDC states that "because section 193 lies within part D," "if EPA approves Idaho's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l) [this appears to be a typo and should read 110(l)]." NRDC Comments at 10.

b. *EPA response to Section 193-related Comments:*

The response to the Section 193 issues raised by NRDC involves many of the same elements of the response above to the Section 110(l) comments, which is also incorporated by reference here.

Section 193 states (in relevant part) that "[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Assuming for purposes of this discussion that Section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis that implementation of the 2002 NSR Reform Rules still in effect (that is, those not vacated by the D.C. Circuit in its New York I decision) are expected to have at least a neutral environmental benefit. Therefore, even if Section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP submissions approved in this action raise a Section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) (finding that NSR associated with the 1-hour ozone standard included control requirements). At issue in *South Coast* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone standard. The facts in the *South Coast* case are thus distinguishable from the instant matter where the Idaho SIP is merely being updated to include changes to the 2002 Federal NSR Rules and, as discussed

above, those changes insure equivalent or greater emission reductions. EPA is not removing the entirety of its Part D NSR program from the Idaho SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving Idaho's SIP revisions that implement rules equivalent to Federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the Federal rules. The Idaho SIP will continue to operate with the full suite of NSR related elements.[4]

II. Final Action

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009, except for certain sections listed below. This action will result in changes to the Idaho SIP in 40 CFR part 52, subpart N.

A. Rules To Approve into the Idaho SIP

EPA approves into the SIP at 40 CFR part 52, subpart N, the Idaho regulations listed in Table 2. It is important to note that in those instances where IDEQ submitted multiple revisions to a single section of IDAPA 58.01.01, the most recent version of that section (based on state effective date) is incorporated into the SIP because it supersedes all previous revisions.

TABLE 2—IDAHO REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/subject	State effective date	Explanation
	58.01.01—Rules for the Control of Air Pollution in Idaho		
006	General Definitions	4/11/2006	Except Section 006.66(b) (re: state air toxics in definition of "modification").
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	4/11/2006	
107	Incorporations by Reference	5/8/2009	Except Section 107.03(g) through (n) and (p).
133	Start-up, Shutdown and Scheduled Maintenance Requirements	4/11/2006	
134	Upset, Breakdown and Safety Requirements	4/11/2006	
135	Excess Emission Reports	4/11/2006	
155	Circumvention	4/11/2006	
200	Procedures and Requirements for Permits to Construct	4/2/2008	
201	Permit to Construct Required	7/1/2002	
202	Application Procedures	4/6/2005	
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/2008	
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/2008	
206	Optional Offsets for Permits to Construct	4/6/2005	
209	Procedures for Issuing Permits	4/11/2006	
213	Pre-Permit Construction	4/11/2006	
220	General Exemption Criteria for Permit to Construct Exemptions	4/11/2006	
222	Category II Exemptions	4/11/2006	
400	Procedures and Requirements for Tier II Operating Permits	7/1/2002	
401	Tier II Operating Permit	4/6/2005	Except 401.01.a (bubbles) and 401.04 (compliance date extension).
402	Application Procedures	7/1/2002	
404	Procedure for Issuing Permits	4/11/2006	
460	Requirements for Emission Reduction Credits	4/11/2006	
511	Applicability	4/11/2006	
512	Definitions	4/11/2006	
513	Requirements	4/11/2006	
560	Notification to Sources	4/11/2006	
561	General Rules	4/11/2006	
575	Air Quality Standards and Area Classification	4/11/2006	
581	Prevention of Significant Deterioration (PSD) Increments	4/11/2006	
679	Averaging Period	4/11/2006	
700	Particulate Matter Process Weight Limitations	5/3/2003	More recent state rule effective date.
725	Rules for Sulfur Content of Fuels	5/8/2009	

B. Rules on Which No Action Is Taken

EPA is taking no action on the following rules:

58.01.01.008, Definitions for Purposes of Section 300 through 386

58.01.01.199, Electric Generating Unit Construction Prohibition

58.01.01.210, Demonstration of Preconstruction Compliance with Toxic Standards

[4] EPA also notes that there are only three nonattainment areas in Idaho where the Part D NSR rules apply. There are no existing major stationary sources within any of these nonattainment areas so the rule provisions that define when a modification to an existing major source would be subject to review do not actually apply to any sources.

58.01.01.225, Permit to Construct Processing Fee
58.01.01.228, Appeals
58.01.01.313, 317, 387–399, 395, Procedures and Requirements for Tier I Operating Permits
58.01.01.410, Appeals
58.01.01.175–181, Procedures and Requirements for Permits Establishing a Facility Emissions Cap
58.01.01.861, Standards of Performance of Hospital/Medical/Infectious Waste Incinerators

C. Scope of Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.[5] Therefore, EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2010.

Dennis J. McLerran,

Regional Administrator Region 10.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. In § 52.670(c), the table in paragraph (c) is amended:
■ a. By revising entries 006 and 007.
■ b. By revising entry 107.
■ c. By revising entry 200.
■ d. By revising entries 133 though 135.
■ e. By revising entry 155.
■ f. By revising entries 201 and 202.
■ g. By revising entries 204 through 206.
■ h. By revising entry 209.
■ i. By revising entry 213.
■ j. By revising entry 220.
■ k. By revising entry 222.
■ l. By revising entries 400 through 402.

[5] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

■ m. By revising entry 404.
■ n. By revising entry 460.
■ o. By revising entries 511 through 513.
■ p. By revising entries 560 and 561.
■ q. By revising entry 575.
■ r. By revising entry 581.
■ s. By revising entry 679.
■ t. By revising entry 700.
■ u. By revising entry 725.

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
006	General Definitions	4/11/06, 7/1/02, 4/5/00, 3/20/97, 5/1/94	11/26/2010 [Insert page number where the document begins]	Except Section 006.55(b) (re: state air toxics in definition of "modification").
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	4/11/06, 4/5/00, 6/30/95, 5/1/95, 5/1/94	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
107	Incorporations by Reference	5/8/09, 3/30/07, 3/20/04, 7/1/97, 5/1/94	11/26/2010 [Insert page number where the document begins]	Except Section 107.03(g) through (n) and (p).
*	*	*	*	*
133	Start-up, Shutdown and Scheduled Maintenance Requirements.	4/11/06, 4/5/00, 3/20/97	11/26/2010 [Insert page number where the document begins]	
134	Upset, Breakdown and Safety Requirements.	4/11/06, 4/5/00, 3/20/97	11/26/2010 [Insert page number where the document begins]	
135	Excess Emission Reports	4/11/06, 4/5/00, 3/20/97	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
155	Circumvention	4/11/06	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
200	Procedures and Requirements for Permits to Construct.	4/2/2008	11/26/2010 [Insert page number where the document begins]	
201	Permit to Construct Required	7/1/02	11/26/2010 [Insert page number where the document begins]	
202	Application Procedures	4/6/05, 7/1/02, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/08, 3/30/07, 4/6/05, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/08, 3/30/07, 4/6/05	11/26/2010 [Insert page number where the document begins]	
206	Optional Offsets for Permits to Construct.	4/6/05	11/26/2010 [Insert page number where the document begins]	

EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	* *	*	* *	*
209	Procedures for Issuing Permits	4/11/06, 4/6/05, 5/3/03, 7/1/02, 4/5/00, 3/19/99, 3/23/98, 5/1/94	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
213	Pre-Permit Construction	4/11/06, 5/3/03, 4/5/00, 3/23/98	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
220	General Exemption Criteria for Permit to Construct Exemptions.	4/11/06, 4/5/00	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
222	Category II Exemptions	4/11/06, 4/5/00, 5/1/94, 7/1/97	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
400	Procedures and Requirements for Tier II Operating Permits.	7/1/02	11/26/2010 [Insert page number where the document begins]	
401	Tier II Operating Permit	4/6/05, 7/1/02, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	Except 401.01.a (bubbles) and 401.04 (compliance date extension).
402	Application Procedures	7/1/02, 5/1/94, 4/5/00, 7/1/02	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
404	Procedure for Issuing Permits	4/11/06, 4/5/00, 5/1/94, 7/1/02	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
460	Requirements for Emission Reduction Credits.	4/11/06, 4/5/00, 5/1/94	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
511	Applicability	4/11/06	11/26/2010 [Insert page number where the document begins]	
512	Definitions	4/11/06, 5/1/94, 4/5/00	11/26/2010 [Insert page number where the document begins]	
513	Requirements	4/11/06	11/26/2010 [Insert page number where the document begins]	
*	* *	*	* *	*
560	Notification to Sources	4/11/06	11/26/2010 [Insert page number where the document begins]	

EPA-APPROVED IDAHO REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
561	General Rules	4/11/06, 5/1/94, 3/15/02	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
575	Air Quality Standards and Area Classification.	4/11/06	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
581	Prevention of Significant Deterioration (PSD) Increments.	4/11/06, 5/3/03, 7/1/97, 5/1/94.	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
679	Averaging Period	4/11/06, 5/1/94	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
700	Particulate Matter Process Weight Limitations.	5/3/03, 4/5/00	11/26/2010 [Insert page number where the document begins]	
*	*	*	*	*
725	Rules for Sulfur Content of Fuels	5/8/09, 5/1/94	11/26/2010 [Insert page number where the document begins]	

* * * * *

[FR Doc. 2010–29628 Filed 11–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2010–0006; FRL–9231–5]

RIN 2025–AA28

Addition of National Toxicology Program Carcinogens; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding 16 chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act of 1990 (PPA). These 16 chemicals have been classified by the National Toxicology Program in their Report on Carcinogens as "reasonably anticipated to be a human carcinogen." EPA has determined that these 16 chemicals meet the EPCRA section 313(d)(2)(B) criteria because they can reasonably be anticipated to cause cancer in humans.

DATES: This final rule is effective November 30, 2010, and shall apply for the reporting year beginning January 1, 2011 (reports due July 1, 2012).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2010–0006. 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 OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; e-mail: *bushman.daniel@epa.gov,* for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the chemicals included in this final rule. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. * Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. What is the statutory authority for this final rule?

This rule is issued under EPCRA section 313(d) and section 328, 42 U.S.C. 11023 *et seq*. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. What is the background for this action?

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2) are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the "acute human health effects criterion;" the section 313(d)(2)(B) criterion as the "chronic human health effects criterion;" and the section 313(d)(2)(C) criterion as the "environmental effects criterion."

EPA has published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Summary of Proposed Rule

A. What chemicals did EPA propose to add to the EPCRA section 313 list of toxic chemicals?

As discussed in the proposed rule (75 FR 17333, April 6, 2010) EPA proposed to add 16 chemicals to the EPCRA section 313 list of toxic chemicals. These 16 chemicals had been classified as "Reasonably Anticipated To Be Human Carcinogen" by the National Toxicology Program (NTP) in their 11th Report on Carcinogens (RoC) document. In addition, based on a review of the available production and use information, EPA determined that these 16 chemicals are expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds. The NTP is an interagency program within the Department of Health and Human Services (DHHS) headquartered at the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health (NIH). As part of their cancer evaluation work, the NTP periodically publishes the RoC document which contains cancer classifications from the NTP's most recent chemical evaluations as well as the classifications from previous versions of the RoC. There is an extensive review process for the RoC which includes evaluations by scientists from the NTP, other Federal health research and regulatory agencies (including EPA), and nongovernmental institutions. The RoC review process also includes external peer review and several opportunities for public comment.

B. What was EPA's rationale for proposing to list the NTP carcinogens?

As EPA stated in the proposed rule (75 FR 17334, April 6, 2010), the NTP RoC document undergoes significant scientific review and public comment and mirrors the review EPA has historically done to assess chemicals for listing under EPCRA section 313 on the basis of carcinogenicity. The conclusions regarding the potential for chemicals in the NTP RoC to cause cancer in humans are based on established sound scientific principles. EPA believes that the NTP RoC is an excellent and reliable source of information on the potential for chemicals covered therein to cause cancer in humans. Based on EPA's review of the data contained in the 11th NTP RoC (Ref. 1) for the 16 chemicals, the Agency agreed that the chemicals can reasonably be anticipated to cause cancer. Therefore, EPA determined that the evidence was sufficient for listing all of the chemicals in the proposed rule on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for the chemicals as presented in the 11th RoC (Ref. 2).

IV. Summary of Final Rule

EPA is finalizing the addition of the 16 chemicals to the EPCRA section 313 list of toxic chemicals. This final rule contains no changes to the list of chemicals EPA included in the proposed rule. EPA has determined that each of these 16 chemicals meets the listing criteria under EPCRA section 313(d)(2)(B). The chemicals being added as individual chemical listings on the EPCRA section 313 list in this final rule include the following: 1-amino-2,4-dibromoanthraquinone; 2,2-bis(bromomethyl)-1,3-propanediol; furan; glycidol; isoprene; methyleugenol; o-nitroanisole; nitromethane; phenolphthalein; tetrafluoroethylene; tetranitromethane; and vinyl fluoride. In addition, the following chemicals are being added to the EPCRA section 313 chemical category for polycyclic aromatic compounds (PACs): 1,6-dinitropyrene; 1,8-dinitropyrene; 6-nitrochrysene; and 4-nitropyrene. The PACs category is a category of persistent, bioaccumulative, toxic (PBT) chemicals and as such has a lower reporting threshold of 100 pounds (40 CFR 372.28(a)(2)).

V. What comments did EPA receive on the Proposed Rule and what are EPA's responses to those comments?

EPA received nine comments on the proposed rule to add the 16 NTP carcinogens to the EPCRA section 313 list. Seven of the comments were supportive of EPA's proposed listings while two comments contained objections to the addition of these chemicals. The commenters that supported the proposed rule included; five individuals, OMB Watch, and PT AirWatchers. The two commenters that did not support the proposed rule were the Chemical Products Corporation and the International Institute of Synthetic Rubber Producers. The most significant comments are summarized and responded to below. The complete set of comments and EPA's responses can be found in the response to comment document in the docket for this rulemaking (Ref. 3).

The Chemical Products Corporation provided extensive comments on their review of the NTP technical report on anthraquinone, a chemical that was not included in those EPA proposed to list. The comments documented the issues and problems they believe exist with that technical report and their attempts to have the report revised. Their issues primarily concerned the identity of the materials tested. Based on their review and experience with NTP technical report for anthraquinone, the commenter believes that the NTP technical reports that were a primary basis for the NTP classification of the chemicals in the proposed rule as "reasonably anticipated to be a human carcinogen" should not be relied upon by EPA for making decisions regarding the addition of chemicals to the EPCRA section 313 toxic chemical list. The commenter also suggested that EPA rely on the International Agency for Research on Cancer (IARC) Group 2A list (i.e., chemicals classified as probably carcinogenic to humans) and add only those chemicals which have IARC Group 2A classifications. That would include two chemicals, glycidol and vinyl fluoride out of the 16 at issue in this action.

EPA notes that the commenter is questioning the validity of an NTP technical report that is unrelated to any of the chemicals that EPA proposed for listing. The report in question concerns anthraquinone, a chemical that was not the subject of the proposed rule, is not on the EPCRA section 313 list of toxic chemicals, and is not classified as a carcinogen in the NTP's 11th Report on Carcinogens. The commenter believes that the scientific validity of all of the NTP technical reports is questionable because of problems they have with one of the NTP technical reports. As this report is outside the scope of the proposed rule, EPA is not addressing the specific issues the commenter has with the report or the NTP's responses to the commenter. EPA does not believe that issues raised about one NTP technical report mean that the scientific validity of all NTP technical reports should be in question. As EPA discussed in the proposed rule, the NTP review process for the Report on Carcinogens is extensive and includes both peer review and public comment (75 FR 17335, April 6, 2010). In addition, as discussed in the proposed rule (75 FR 17336, April 6, 2010), EPA reviewed the NTP chemical profiles and supporting materials for each chemical proposed for listing. The commenter has provided no data that would suggest that the NTP reports for the 16 chemicals being added to the EPCRA section 313 list are flawed or any data that would suggest the chemicals do not meet the EPCRA section 313(d)(2)(B) listing criteria. The Agency finds no specific basis to question any of the NTP documents used to support the listing of the 16 chemicals included in this rule based on these comments.

Regarding the commenter's suggestion that EPA only add those chemicals that have been classified as Group 2A (probably carcinogenic to humans) by IARC, EPA notes that the scientific data for a number of chemicals classified as Group 2B (possibly carcinogenic to humans) under IARC has been found to be sufficient to support listing under EPCRA section 313 (see for example, 59 FR 1788, January 12, 1994). These determinations were the result of a case-by-case analysis of the available cancer data, they were not based solely on the IARC cancer classification. Thus, EPA would not limit the listing of carcinogens to only chemicals with IARC Group 2A classifications. Even for IARC 2A classified chemicals, EPA would review the available cancer data before making an EPCRA section 313 listing determination.

The International Institute of Synthetic Rubber Producers, Inc. (IISRP) stated that they found that overall there are no factual inaccuracies in EPA's toxicology summaries, but that there were interpretations of the data they believed should be noted, plus certain environmental data which they thought should be included in the record. The IISRP noted that the proposed rule refers to similarities between isoprene and butadiene and stated that isoprene also differs from 1,3-butadiene in that for isoprene, there have been no elevations in thymic lymphoma in exposed mice at any concentrations tested. The commenter stated that the absence of this response in mice with isoprene is noteworthy since the basis of butadiene's IARC Group1 classification

is all hemolytic organs (which the commenter stated would include lymphomas). The commenter stated that the various other tumor types occurring with isoprene or butadiene in mice are not seen in epidemiology studies of butadiene-exposed populations. The commenter also stated that there were no elevations in tumors found in mice at the lowest exposure tested (10 ppm; 28 mg/m^3) and this coupled with the fact that isoprene is produced endogenously in humans suggests that there is a threshold for such a response. The commenter stated that this information supports the IARC 2B categorization of isoprene as a "possible" human carcinogen rather than the "reasonably anticipated" categorization by NTP, which triggers the TRI listing.

The IISRP also stated that EPA omitted certain environmental data that should be included in the record. The commenter stated that IARC notes that isoprene occurs in the environment as emissions from vegetation, particularly from deciduous forests. The commenter cited sources that state that isoprene is the dominant hydrocarbon released by vegetation in most ecosystems. The commenter also cited sources that state that isoprene release by vegetation, particularly trees, exceeds anthropogenic hydrocarbon release to the atmosphere. The commenter stated that isoprene has also been found in tobacco smoke, gasoline, turbine and automobile exhaust and in emissions from wood pulping, biomass combustion and rubber abrasion.

EPA disagrees with the IISRP that EPA should use the IARC "possible" human carcinogen classification for isoprene rather than the "reasonably anticipated" categorization by NTP. Since isoprene is an analog of 1,3-butadiene, the NTP provided data on 1,3-butadiene under the section on "Additional Information Relevant to Carcinogenicity" (Ref. 4). The commenter pointed out differences between isoprene and butadiene, however, the NTP also recognizes that there are differences in the data for isoprene and 1,3-butadiene as evidenced by the NTP's classification of 1,3-butadiene as a "known to be a human carcinogen" (Ref. 2). For isoprene, the NTP found evidence of tumor formation at multiple organ sites in multiple species of experimental animals (Ref. 4). Nothing in the commenter's statements leads EPA to believe that isoprene is not correctly classified by NTP as "reasonably anticipated to be a human carcinogen" or that the data underlying that classification suggests the isoprene does not meet the EPCRA section 313(d)(2)(B) listing criteria.

EPA also disagrees with IISRP's characterization that the NTP classification is a trigger for TRI listing. According to EPCRA § 313(d)(2), a chemical may be added to the TRI list if it "is known to cause or can reasonably be anticipated to cause in humans cancer." Particular listings by scientific bodies, such as the NTP, are useful in determining whether that standard has been met but are not necessarily triggers for listing under EPCRA. EPA does not take an IARC Group 2B classification to automatically mean that a chemical would not meet the EPCRA section 313 listing criteria. EPA again notes that in previous EPCRA section 313 listing decisions, the scientific data for a number of chemicals classified as Group 2B (possibly carcinogenic to humans) under the IARC has been found to be sufficient to support listing under EPCRA section 313 (see for example potassium bromate, sodium o-phenylphenoxide, and other chemicals in 59 FR 1788, January 12, 1994). These determinations were the result of a case-by-case analysis of the available cancer data; they were not based solely on the IARC cancer classification. Thus, EPA would not limit the listing of carcinogens to only chemicals with IARC Group 2A classifications. Even for IARC 2A classified chemicals, EPA would review the available cancer data before making a listing determination.

The environmental data that the commenter suggests is missing from the rulemaking record actually is discussed in detail in the supporting documents cited in the proposed rule. For example, reference number 13 in the proposed rule (Ref. 4 in today's final rule) contains the following discussion:

Exposure

Isoprene is formed endogenously in humans and is generally the major hydrocarbon (up to 70% in human breath) (Gelmont *et al.* 1981). Concentrations in blood range from 15 to 70 nmol/L (1.0 to 4.8 µg/L) (Cailleux *et al.* 1992). Humans produce isoprene endogenously at a rate of 0.15 µmol/kg/h, equivalent to approximately 17 mg/day for a 150-lb (70-kg) person (Taalman 1996). Endogenous production rates reported for rats and mice are 1.9 and 0.4 µmol/kg/h, respectively (Peter *et al.* 1987). Ambient air concentrations of isoprene are generally less than 10 ppb or approximately 0.03 mg isoprene/m3. Based on estimated human intake of 15 to 20 m^3 air per day, ambient air would contribute less than 0.45 to 0.6 mg/day to daily isoprene exposure.

NIOSH collected data on potential exposure to isoprene in the National Occupational Hazard Survey (NOHS) from 1972 to 1974 (NIOSH 1976) and in the National Occupational Exposure Survey (NOES) from 1981 to 1983 (NIOSH 1990). The first survey (NIOSH 1976) indicated that 58,000 employees in over 30 different industries were potentially exposed to isoprene. The more limited later survey of six industries showed that approximately 3,700 workers were potentially exposed to isoprene between 1981 and 1983 (NIOSH 1990). Isoprene is emitted from plants and trees and is widely present in the environment at low concentrations (Taalman 1996). Isoprene global emissions, estimated at 175 to 503 million Mg per year, represent approximately 44 to 51% of total global natural volatile organic compound emissions (Guenther *et al.* 1995). The average biogenic emission rate factor for isoprene in the United States is approximately 3 mg/m2/h. Isoprene concentrations in biogenic emissions range from 8% to 91% of total VOCs, with a 58% average. Since isoprene biosynthesis is associated with photosynthesis, isoprene emissions are negligible at night (Guenther *et al.* 1994). The south central and southeastern areas of the United States have the highest biogenic emissions. Summertime isoprene emissions are highest in each region and account for more than 50% of annual biogenic emissions (Lamb *et al.* 1993).

Sources of anthropogenic releases of isoprene to the atmosphere include ethylene production by cracking naphtha, wood pulping, oil fires, wood-burning stoves and fireplaces, other biomass combustion, tobacco smoking (3,100 µg/cigarette), gasoline, and exhaust of turbines and automobiles (HSDB 2000).

Reported U.S. ambient air concentrations of isoprene range from 0.003 to 0.06 mg/m^3 (1 to 21 ppb), with isoprene representing less than 10% of NMHCs (Arnts and Meeks 1980, Altschuller 1983, Lawrimore and Aneja 1997, Hagerman *et al.* 1997). During stagnation conditions, biogenic hydrocarbons may contribute more to total atmospheric hydrocarbons (Altschuller 1983).

Foods of plant origin would be expected to be a source of daily exposure to isoprene since it is emitted by agricultural crops and is the basic structural unit in countless natural products found in foods such as terpenes and vitamins A and K (IARC 1994). Its occurrence has been reported in the essential oil of oranges, in the fruit of hops, and in the root of carrots (Duke 1992).

The primary source of isoprene in indoor air is environmental tobacco

smoke. Isoprene was found to be the major component of hydrocarbons in the air of a smoky café (10 smoking patrons, 10 not smoking) (16.7%) and sidestream smoke (29.2%) (Barrefors and Petersson 1993). A monitoring survey in November 1992 in homes and workplaces in the greater Philadelphia area found mean isoprene concentrations in personal air samples of 4.65 μg/m³ in nonsmoking homes (n = 60), 18.15 μg/m³ in smoking homes (n = 29), 5.29 μg/m³ in nonsmoking workplaces (n = 51), and 22.80 μg/m³ in smoking workplaces (n = 28). Differences in isoprene concentrations in personal air between nonsmoking and smoking sites were highly significant (Heavner et al. 1996). Another survey reported median summertime isoprene concentrations of 2.90 μg/m³ in indoor air (n = 3; no information on whether occupants were smokers or nonsmokers) compared to 0.40 μg/m³ in outdoor air (n = 1) in the Lower Rio Grande Valley of Texas (Muerjee et al. 1997).

As the text above clearly shows, information on environmental data was not omitted from the rulemaking record. However, as this information was not directly related to the hazard determination for isoprene being used as a basis to list the chemical under EPCRA section 313, it was not included in the text of the Federal Register notice for the proposed rule.

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2010–0006. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. USEPA, OEI. Memorandum from Mark Miller, Ph.D., Toxicologist, Analytical Support Branch to Nicole Paquette, Ph.D., Chief, Analytical Support Branch. January 28, 2010. Subject: Review of National Toxicology Program (NTP) Cancer Classification Data for Sixteen Chemicals.

2. NTP, 2005. National Toxicology Program. Introduction: Report on Carcinogens, Eleventh Edition. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

3. USEPA, OEI. Response to Comments Received on the April 6, 2010, **Federal Register** Proposed Rule (75 FR 17333): Addition of National Toxicology Program Carcinogens; Community Right-to-Know Toxic Chemical Release Reporting. U.S. Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access. August 12, 2010.

4. NTP, 2005. National Toxicology Program. 11th Report on Carcinogens—Isoprene Substance Profile. Released January 31, 2005. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.

VII. Statutory and Executive Order reviews associated with this action?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." The Office of Management and Budget (OMB) determined that this action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This final rule does not contain any new information collection requirements that require additional approval by the OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.* Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350- 2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363.15); those related to Form A under OMB control number 2025–0010 (EPA ICR No. 1704.09); and those related to trade secret designations under OMB Control 2070–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

For Form R, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average, in the first year, approximately $4,615 per Form R (for a total first year cost of $858,299 based on 16,069 total burden hours). In subsequent years, the burden for collecting this information is estimated to average $1,553 per Form R (for a total cost of $288,902 based on 5,517 total burden hours). These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICRs need to be amended in order to account for an increase in burden associated with the

final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a "small business" by the Small Business Administration 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.

Of the 109 entities estimated to be impacted by this rule, 41 are small businesses. Of the affected small businesses, all 41 have cost impacts of less than 1% in both the first and subsequent years of the rulemaking. No small businesses are projected to have a cost impact of 1% or greater. In the first year, of the 41 estimated cost impacts, there is a maximum impact of 0.616% and a minimum impact of less than 0.001%. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to be $859,072 in the first year of reporting. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because it does not impact the production of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule adds additional chemicals to the EPCRA section 313

reporting requirements. By adding chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low-income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2010.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: November 18, 2010.

Lisa P. Jackson,

Administrator.

■ Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.28 the table in paragraph (a)(2) is amended under the heading "Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)" by adding four new entries in alphabetical order to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) * * *

(2) * * *

Category name	Reporting threshold
* * * * *	
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below).	100
* * * * *	
42397–64–8 1,6-Dinitropyrene.	
42397–65–9 1,8-Dinitropyrene.	
* * * * *	
07496–02–8 6-Nitrochrysene.	
* * * * *	
57835–92–4 4-Nitropyrene.	
* * * * *	

■ 3. Section 372.65 is amended as follows:

■ a. In the table to paragraph (a) by adding new entries in alphabetical order.

■ b. In the table to paragraph (b) by adding new entries in numerical order.

■ c. In the table to paragraph (c) under the heading "Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)" by adding four entries in alphabetical order.

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * * *		
1-Amino-2,4-dibromoanthraquinone	00081–49–2	1/11
* * * * *		
2,2-bis(Bromomethyl)-1,3-propanediol	003296–90–0	1/11
Furan	00110–00–9	1/11
* * * * *		
Glycidol	00556–52–5	1/11
* * * * *		
Isoprene	00078–79–5	1/11
* * * * *		
Methyleugenol	00093–15–2	1/11
* * * * *		
o-Nitroanisole	00091–23–6	1/11
* * * * *		
Nitromethane	00075–52–5	1/11
* * * *		
Phenolphthalein	00077–09–8	1/11
* * * * *		
Tetrafluoroethylene	00116–14–3	1/11
* * * * *		
Tetranitromethane	00509–14–8	1/11
* * * * *		
Vinyl Fluoride	00075–02–5	1/11
* * * * *		

(b) * * *

CAS No.	Chemical name	Effective date
* * *	* * *	*
00075–02–5	Vinyl Fluoride	1/11
* * *	* * *	*
00075–52–5	Nitromethane	1/11
* * *	* * *	*
00077–09–8	Phenolphthalein	1/11
* * *	* * *	*
00078–79–5	Isoprene	1/11
* * *	* * *	*
00081–49–2	1-Amino-2,4-dibromoanthraquinone	1/11
* * *	* * *	*
00091–23–6	o-Nitroanisole	1/11
* * *	* * *	*
00093–15–2	Methyleugenol	1/11
* * *	* * *	*
00110–00–9	Furan	1/11
* * *	* * *	*
00116–14–3	Tetrafluoroethylene	1/11
* * *	* * *	*
00509–14–8	Tetranitromethane	1/11
* * *	* * *	*
00556–52–5	Glycidol	1/11
* * *	* * *	*
03296–90–0	2,2-bis(Bromomethyl)-1,3-propanediol	1/11
* * *	* * *	*

(c) * * *

Category name	Effective date
* * * * *	
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)	
* * * * *	
42397–64–8 1,6-Dinitropyrene	1/11
42397–65–9 1,8-Dinitropyrene	1/11
* * * * *	
07496–02–8 6-Nitrochrysene	1/11
* * * * *	
57835–92–4 4–Nitropyrene	1/11
* * * * *	

[FR Doc. 2010–29627 Filed 11–24–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205–0289–02]

RIN 0648–XA053

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Temporary Removal of 2,000-lb (907.2-kg) Herring Trip Limit in Atlantic Herring Management Area 1A

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

ACTION: Temporary rule.

SUMMARY: NMFS announces a temporary removal of the 2,000-lb (907.2 kg) trip limit for the Atlantic herring fishery in Management Area 1A (Area 1A) because catch data indicate that 95 percent of the total allowable catch (TAC) threshold in Area 1A has not been fully attained. Vessels issued a Federal permit to harvest Atlantic herring may resume fishing for and landing herring in amounts greater than 2,000 lb (907.2 kg), consistent with their respective Atlantic herring permit categories, effective 0001 hrs, November 29, 2010, through 0001 hrs, December 3, 2010. At 0001 hrs, December 3, 2010, vessels will again be prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip or calendar day.

DATES: Effective 0001 hours, November 29, 2010, through 0001 hours, December 3, 2010.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978–675–2179.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. Final herring specifications for 2010–2012 published on August 12, 2010 (75 FR 48874). The 2010 total TAC is 91,200 mt, allocated to the herring management areas as follows: 26,546 mt to Area 1A; 4,362 mt

to Area 1B; 22,146 mt to Area 2; and 38,146 mt to Area 3.

Regulations at § 648.201(a) require NMFS to monitor catch from the herring fishery in each of the herring management areas, using dealer reports, state data, and other available information, to determine when the catch of herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to prohibit, through publication in the **Federal Register** herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from the specified management area for the remainder of the closure period, with the exception of transiting as described below.

NMFS published a temporary rule, effective November 8, 2010, in the **Federal Register** (75 FR 69104, November 10, 2010) projecting that 95 percent of the Area 1A TAC had been harvested. Based upon information indicating that 95 percent of the TAC would be reached by November 8, 2010, the temporary rule reduced the herring trip limit for all federally permitted herring vessels to 2,000 lb (907.2 kg) per trip in Area 1A; the trip limit reduction was to be effective through December 31, 2010.

The NMFS Northeast Regional Administrator subsequently determined, based upon dealer reports and other available information, that the herring fleet had not yet taken 95 percent of the TAC as of November 8, 2010, and that there was approximately 5,000 mt of Atlantic herring quota still available in Area 1A. Therefore, to ensure that the herring fleet was able to take up to 95 percent of the TAC, consistent with applicable regulations and trip limits, NMFS published a temporary rule, effective November 15 through November 17, 2010, which temporarily removed the 2,000-lb (907.2-kg) trip limit, and restored the trip limits, if any, in effect before November 8, 2010 (75 FR 69903, November 16, 2010). Effective 0001 hrs November 17, 2010, all federally permitted herring vessels were again prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from Area 1A, through December 31, 2010.

NMFS has since determined that, as of November 18, 2010, based on the best available landings information, the herring fleet has not yet taken 95 percent of the TAC. Best available data indicates that approximately 2,400 mt of the Atlantic herring TAC in Area 1A is still available. Therefore, to ensure that the herring fleet is able to take up to 95 percent of the TAC, consistent with applicable regulations and trip limits, this action temporarily removes the 2,000-lb (907.2-kg) trip limit implemented on November 17, 2010, and restores the trip limits, if any, in effect before November 17, 2010, from 0001 hours November 29, 2010, until 0001 hrs December 3, 2010. This means that, effective 0001 hrs, November 29, 2010, through 0001 hrs, December 3, 2010, vessels issued an All Areas Limited Access Herring Permit are authorized to fish for, possess, or land Atlantic herring with no possession restrictions; vessels issued an Areas 2 and 3 Limited Access Herring Permit are authorized to fish for, possess, or land Atlantic herring only if issued an open access herring permit or a Limited Access Incidental Catch Permit; vessels issued a Limited Access Incidental Catch Herring Permit are authorized to fish for, possess, or land up to 55,000 lb (25 mt); and vessels issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring in Area 1A.

At 0001 hrs December 3, 2010, all federally permitted herring vessels will again be prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from Area 1A, through December 31, 2010. Vessels transiting Area 1A with more than 2,000 lb (907.2 kg) of herring on board may do so, provided such herring was not caught in Area 1A and that all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

Effective 0001 hrs, November 29, 2010, federally permitted dealers are advised that they may purchase more than 2,000 lb (907.2 kg) of Atlantic herring caught in Area 1A by federally permitted vessels until 0001 hrs December 3, 2010. At 0001 hrs December 3, 2010, federally permitted dealers will again be prohibited from purchasing herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 1A, through 2400 hrs local time, December 31, 2010.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action temporarily removes the 2,000-lb (907.2-kg) herring trip limit in Area 1A from 0001 hours, November 29 until 0001 hours, December 3, 2010. As of 0001 hrs December 3, 2010, the Area 1A trip limit will again be reduced to 2,000 lb (907.2 kg) per trip or calendar day, until December 31, 2010. The Atlantic herring fishery opened for the 2010 fishing year at 0001 hrs on January 1, 2010. The Atlantic herring fleet was prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 mt) per trip or calendar day on November 8, 2010, based on projections that 95 percent of the available Area 1A herring quota had been harvested. The 2,000-lb (907.2-kg) trip limit was temporarily removed effective 0001 hrs November 15 through 0001 hours November 17, 2010, so that the herring fleet would have the opportunity to take 95 percent of the Area 1A TAC. However, catch data indicating the Atlantic herring fleet did not harvest the full amount of available quota have only very recently become available. If implementation of this temporary removal of the 2,000-lb (907.2-kg) trip limit is delayed to solicit prior public comment, the remaining quota may not be fully harvested before the end of the 2010 fishing year on December 31. The AA finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: November 22, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29766 Filed 11–22–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA058

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 m) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 23, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 4,998 metric tons, as established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010) and subsequent reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), and August 23, 2010 (75 FR 52478, August 26, 2010).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2010 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 19, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 22, 2010.

Brian W. Parker,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29765 Filed 11–22–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 227
Friday, November 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2010–0366]

Proposed Generic Communications Reporting for Decommissioning Funding Status Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to clarify for licensees and external stakeholders the information that they should use and present to the NRC in the Decommissioning Funding Status (DFS) reports to ensure that the NRC staff, licensees, and stakeholders are using the same, correct figures and to prevent potential issues resulting from shortfalls in the licensee's decommissioning fund.

DATES: Comment period expires December 27, 2010. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules, Directives and Announcements Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop TWB–05–B01M, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** Notice.

FOR FURTHER INFORMATION, CONTACT: Aaron L. Szabo, at 301–415–1985 or by e-mail at *aaron.szabo@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2010–XXX

10 CFR 50.75 Reporting for Decommissioning Funding Status Reports

Addressees

All holders of and applicants for a power reactor operating license or construction permit under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of and applicants for a power reactor early site permit, combined license, standard design certification, standard design approval, or manufacturing license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

Intent

The NRC is issuing this RIS to clarify the reporting requirements of 10 CFR 50.75(f)(1) and 10 CFR 50.75(f)(2) regarding the status of decommissioning funding assurance.

In 2009, the NRC received the DFS reports for all the NRC licensed power reactors, including those undergoing decommissioning, as required by 10 CFR 50.75(f)(1) and (2). During the evaluation process for the DFS reports, the NRC staff determined that communication between the NRC and licensees could be enhanced. Therefore, the staff decided to provide this RIS to clarify the information that licensees should report to the NRC in the DFS reports to ensure standardization and consistency. This RIS does not replace any information provided in RIS 2001–07, Revision 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009, and should be considered a supplement to it.

Background

SECY–07–0197, "Reactor Decommissioning Trust Fund Oversight by Other Agencies and Recommendations Regarding Further Commission Action," issued November 2007, recommended to the Commission that the NRC staff begin to perform periodic spot-checks at the licensee's offices of the original statements and other related documents sent to a licensee from its trustee that disclose the trust fund balance to ensure that the amounts reported to the NRC in the DFS reports are equivalent to the amount stated in the licensee's year-end bank statement.

The NRC has completed over half of the required spot-checks, ensuring in each case that the DFS report matched the licensee's submission and that the information provided to the NRC was correct.

In 2009, during the NRC staff's review of the DFS reports, the staff held conference calls and issued requests for additional information to ensure compliance with reporting regulations under 10 CFR 50.75(f). Also during the review, the NRC staff determined that stakeholders needed to be informed about the NRC's evaluation process for decommissioning funding assurance (DFA), as well as about the information that licensees should provide to the NRC when they submit their DFS reports. The current guidance that the NRC staff uses to evaluate the DFS reports appears in Office of Nuclear Reactor Regulation (NRR) Instruction LIC–205, Revision 3 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100550465).

Because of these issues, the NRC staff is clarifying for licensees and external stakeholders the information that they should use and present to the NRC in the DFS reports to ensure that the NRC staff, licensees, and stakeholders are using the same, correct figures and to prevent potential issues resulting from shortfalls in the licensee's decommissioning fund.

Summary of the Issue

On the basis of a review of recent DFS reports submitted to the NRC, the staff has identified two general categories in which DFS report submittals could be improved:

(1) Format and content of submittal.
(2) Site-specific proposals.

Format and Content of Submittal

Under 10 CFR 50.75(c)(2), the licensee must provide the most recent applicable regional data from the U.S. Department of Labor Bureau of Labor Statistics (BLS) when submitting the DFS report. The licensee should provide the month of December of the calendar year preceding the date of the report BLS

regional data, if available, for labor, and fourth quarter of the calendar year preceding the date of the report BLS regional data, if available, for energy; if either or both of those numbers are not available, then the licensee should use the latest available numbers and specify which month or quarter.

Under 10 CFR 50.75(f), the licensee must submit the amount of decommissioning funds accumulated at the end of the calendar year. In some cases, licensees who recover their costs in rates are authorized to accumulate funds outside the decommissioning account until a determination is made by their rate regulator regarding whether the funds will be deposited into the account. Funds held outside the decommissioning trust using a method not listed in 10 CFR 50.75(e) should not be included in the amount of funds reported as accumulated. In some cases, the licensee has accumulated funds in its decommissioning trust greater than needed to satisfy the minimum amount required by NRC regulations or has commingled funds set aside to satisfy the NRC requirement with other decommissioning-related funds; if so, the licensee must report the total accumulated amount in its decommissioning trust for radiological decommissioning, pursuant to NRC regulations, and may, separately report the amount accumulated for State costs, spent fuel management costs, or other purposes. The licensee needs to preserve the distinction between NRC-determined cost estimate and all other decommissioning cost estimates in their reports.

The licensee should report the actual amount accumulated for decommissioning, as defined by the NRC's regulations. When performing spot-checks of decommissioning fund accounts, the NRC staff discovered that some licensees provided the book value of their Decommissioning Trust Fund (DTF) balance instead of the market value. Although the book value has usually been a lower amount than the market value, the market value is a more accurate measure of the worth of the DTF, because it is the value of the DTF if liquidated on the date reported. Licensees should avoid providing the book value and consider providing the market value for their DTF balance. The DFS reports will allow the NRC staff to track the amounts in all licensees' DTFs to determine financial market trends and ensure that licensees are following all NRC regulations.

When submitting the DFS report, if the licensee provides a schedule of the annual amounts remaining to be collected, the licensee should avoid providing an aggregated amount and instead provide the amounts in a year-by-year breakdown that gives the source of the annual amounts remaining to be collected (*i.e.,* rate-recovery or non-bypassable charges, as allowed under 10 CFR 50.75(e)(ii)(A) or (B)). If a licensee is relying on any contracts under 10 CFR 50.75(e)(i)(v) as the source of the annual amounts remaining to be collected, the licensee should identify the contracts and provide the amounts to be collected on an annual basis. The licensee may also provide the NRC with the regulatory order stating the amounts and length of the schedule.

If the licensee claims a greater than 2 percent real rate of return, in accordance with 10 CFR 50.75(e)(1)(i), the licensee should provide the rate-setting authority order permitting a greater real rate of return or other documentation granting the higher rate, including inflation and other escalation factors. The licensee should also indicate whether the higher real rate of return has been allowed during the decommissioning period.

Under 10 CFR 50.75(f), the DFS report must state the modifications to the method of providing DFA. This includes, but is not limited to, adding or eliminating funding methods, changing existing methods (for example, changing the terms of contractual obligations or the face amount of a surety, insurance, or other guarantee method), and changing the commingling of funds (creating subaccounts, moving funds from one unit to another within the same site). Any material changes to the trust agreement must also be reported in the DFS report (Note: under 10 CFR 50.75(h)(1)(iii), material changes to the trust agreement require prior written notification to the NRC).

Site-Specific Proposals

Licensees are required to provide a site-specific cost estimate five years prior to cessation of operations. However, if a licensee chooses to submit a site-specific cost estimate prior to that time, it must be equal to or greater than the NRC minimum, as calculated in 10 CFR 50.75(c), and be accompanied by the same information required for the site-specific study required under 10 CFR 50.75(f)(3). It should be consistent with the cost assessments made in the most recently submitted site-specific cost estimate to the NRC, Federal Energy Regulatory Commission, state public utilities commission, or other regulatory body. The licensee should provide a reference and citation to any site-specific cost estimate submitted to another regulatory body. If the licensee does not provide this information, the NRC staff may determine the site-specific method to be insufficient as submitted and only allow the licensee to use the regulatory formula, with no credit for safe store, unless more information is provided.

The detailed site-specific study should have a year-by-year cost breakdown combined with the overnight cost (cost without inflation or cost escalation) of decommissioning the plant using constant dollars for the year reported. The NRC staff evaluates the site-specific method using the following steps: (1) Applying the current revision of NRR OI LIC–205 to calculate the growth of the fund during operations, (2) for each year during decommissioning, (a) subtracting the annual cost to be incurred and then (b) providing a 2 percent real rate of return, unless a higher rate has been allowed, and (3) repeating step (2) for each year of the decommissioning period until either the decommissioning period is completed or the DTF is depleted.

Backfit Discussion

This RIS provides regulatory clarification and does not represent a new or different staff position regarding the implementation of 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning." It requires no action or written response beyond that required in 10 CFR 50.75. Any action by addressees to implement changes to their reporting procedures in accordance with the clarifications in this RIS is strictly voluntary, ensures compliance with current regulations, and therefore is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

Federal Register Notification

To be done after the public comment period.

Paperwork Reduction Act Statement

This RIS contains and references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

If you have any questions about this regulatory issue summary, please contact the person listed below or the

NRR project manager for your specific nuclear power plant.

Contact

Please direct any questions about this matter to Aaron L. Szabo at 301–415–1985 or by e-mail at *aaron.szabo@nrc.gov.*

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of November 2010.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–29738 Filed 11–24–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2008–BT–TP–0010]

Compliance Testing Procedures: Correction Factor for Room Air Conditioners

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Petition for rulemaking; request for comment.

SUMMARY: On November 15, 2010, the Department of Energy received a petition for rulemaking from the Association of Home Appliance Manufacturers (AHAM). The petition, requests the initiation of a rulemaking regarding compliance testing procedures for room air conditioners. The petition seeks temporary enforcement forbearance, or in the alternative, a temporary industry-wide waiver or guidance, to allow use of a data correction factor in compliance testing procedures for room air conditioners. Public comment is requested on whether DOE should grant the petition and proceed with a rulemaking procedure on this matter.

DATES: Comments must be postmarked no later than December 27, 2010.

ADDRESSES: Any comments submitted must reference "Petition for Rulemaking: Correction Factor for Room Air Conditioners." Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AHAM2-2008-TP-0010@ee.doe.gov.* Include "Petition for Rulemaking" in the subject line of the message.
- *Postal Mail:* Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT: Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1414, e-mail: *subid.wagley@ee.doe.gov.* Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, e-mail: *elizabeth.kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. 553(e)). Pursuant to this provision of the APA, AHAM petitioned the Department of Energy for the issuance of a new rule, as set forth below. In publishing this petition for public comment, the Department of Energy is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition. By seeking comment on whether to grant this petition, the Department of Energy takes no position at this time regarding the merits of the suggested rulemaking.

The proposed rulemaking sought by AHAM would allow manufacturers of room air conditioners to use a correction factor that is not currently included in the regulations governing DOE's compliance testing procedures. The petition seeks temporary enforcement forbearance, or a temporary industry-wide waiver or guidance, to allow use of this methodology. The Department of Energy seeks public comment on whether DOE should grant the petition and proceed with a rulemaking procedure on this issue.

Issued in Washington, DC, on November 18, 2010.

Scott Blake Harris,

General Counsel.

Set forth below is the full text of the Association of Home Appliance Manufacturers' petition:

Before the U.S. Department of Energy

November 15, 2010

Petition for Rulemaking

Petition of the Association of the Home Appliance Manufacturers for Temporary Enforcement Forbearance, a Temporary Industry-Wide Waiver Or Guidance To Allow Use of DOE—Proposed Correction Factor for Room Air Conditioner Testing

Pursuant to 5 U.S.C. 553(e), the Association of Home Appliance Manufacturers (AHAM) files this petition.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than $30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs. AHAM, relevant to this petition, represents the manufacturers of the vast majority of room air conditioners.

This petition requests temporary enforcement forbearance, or in the alternative, a temporary industry-wide waiver or guidance, to allow use of a data correction factor for room air conditioners that DOE currently

acknowledges produces more accurate results and which has been proposed (by DOE) for adoption. This relief would be automatically superseded by the effective date of the new DOE test procedure.

We do not believe that our request requires formal notice and comment but we are prepared to supply additional information for any public record or procedure. Similar to the vocation of the microwave oven test procedure, there is longstanding, sufficient public record evidence justifying this requested action. See, 75 FR 42579, 42581 (July 22, 2010).

Initially, we note that this issue stems from an endemic problem within the DOE test procedures which DOE and other stakeholders are beginning to address: The DOE test procedures are outmoded and often rely on older versions of industry practices or consensus body testing standards which have been superseded by standards which are more accurate, uniform, repeatable and reflective of actual use. Indeed, DOE has endorsed and proposed using the new ANSI/ASHRAE test procedure discussed below.

In this case, DOE currently is applying in its compliance testing program an outmoded test methodology, which is less accurate and for that reason alone may produce test results inappropriately indicating that a room air conditioner has technically incorrect ratings, does not qualify for Energy Star, or fails to meet the minimum performance standards. As discussed below, the issue relates to the current DOE recommended test procedure's failure to correct for deviation from standard barometric pressure. It is unreasonable and unfair to penalize companies during this evolving transitional period between an archaic procedure and a new, modern methodology that is more accurate. With these facts in mind, DOE compliance enforcement forbearance, or an industry-wide waiver or guidance, allowing the correction factor for room air conditioners is entirely warranted.

The issue relates to 10 CFR Part 430, Subpart B, Appendix F, promulgated in 1977. For purposes of the DOE minimum efficiency program, industry has since 1983 recognized the benefits of adjusting capacity ratings to reflect a correction factor in Section 6.1.3 of ASHRAE Standard 16–1983 (RA 99). Since 1983, AHAM's room air conditioner certification program has used this correction factor. The correction factor is based on the test room condition deviation from the standard barometric pressure of 29.92 inches of mercury. The correction factor normalizes test capacity results to standard test room conditions and thereby produces more accurate and comparable test results, as acknowledged by DOE. More specifically, the use of the correction factor when barometric pressure is >1 in. Hg below standard rating point allows capacity performance modification.

We understand that DOE or a test laboratory under contract with DOE has recently rejected use of the correction factor at the present time for purposes of certifying compliance to the DOE efficiency standard, on the ground that the correction factor is not contained in the DOE test procedure as it currently is written.

DOE has already acknowledged that its current test procedure is inaccurate due to lack of the correction factor and that the correction factor ought to be adopted. It has so indicated in its recent Supplemental Notice of Proposed Rulemaking (SNOPR) to amend the test procedure. *See* 75 FR 37594, 37635 (June 29, 2010). DOE states:

> "Section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 99) also introduces a correction factor based on the test room condition's deviation from the standard barometric pressure of 29.92 inches (in.) in mercury (Hg) (101 kilopascal (kPa)). Section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 99) states that the cooling capacity may be increased 0.8 percent for each in. Hg below 29.92 in. Hg (0.24 percent for each kPa below 101 kPa). This change would not impact the measured efficiency of units tested at standard testing conditions. The capacity correction factor provides manufacturers with more flexibility in the test room conditions while normalizing results to standard conditions.
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> * * * * *
>
> In sum, DOE has reviewed the most recent revisions of the referenced test standards. ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 99), and has determined that incorporation by reference of these versions provide more accurate and repeatable measurements of capacity while providing greater flexibility to manufacturers in selecting equipment and facilities, and does not add any significant testing burden. Furthermore, these revisions would not impact the measurement of EER for this equipment. DOE also believes that manufacturers may already be using these updated standards in their testing. Therefore, DOE is proposing in today's SNOPR to amend the DOE test procedure to reference the relevant sections of ANSI/AHAM RAC–1–R2008 and ANSI/ASHRAE Standard 16–1983 (RA 99)."

Under these circumstances, and for the interim before final test procedure rulemaking, it is unfair and unreasonable to penalize firms by judging their product against an inaccurate methodology rather than using the correction factor, which DOE correctly asserts is more accurate and which DOE endorses and plans to adopt.

Such action by DOE is entirely warranted. In the case of microwave ovens, DOE unilaterally revoked an outmoded test procedure through a direct final rule and without prior notice. 75 FR 42579 (July 22, 2010) Here, test procedure revocation is not, requested, practical nor prudent because test standards, labels, Energy Star and incentive programs are in place. This petition does not request that DOE circumvent or repeal the test procedure, but rather that it immediately act to improve testing before administrative processes are completed.

If the current test procedure is applied to comparable room air conditioners in test rooms under different barometric pressures, it will produce materially inaccurate capacity results. DOE acknowledges the inaccuracy of the existing test procedure—by stressing that the correction factor in ASHRAE 16–1983 (RA 99) produces more accurate and repeatable test results by normalizing results to standard conditions. 75 FR at 37635. DOE states that Section 6.1.3 of ASHRAE 16–1983 (RA 99) has "a correction factor based on the test room condition's deviation from the standard barometric pressure of 29.92 inches (in.) of mercury (Hg) (101 kilopascal (kPa)) * * * The capacity correction factor provides manufacturers with more flexibility in the test room conditions *while normalizing results to standard conditions*." *Id.* (emphasis added).

DOE concluded that the correction factor "provide[s] *more accurate and repeatable measurements of capacity* while providing greater flexibility to manufacturers in selecting equipment and facilities, and does not add any significant testing burden." *Id.* (emphasis added). DOE goes on to state that it "*also believes that manufacturers may already be using these updated standards in their testing.*" *Id.* (emphasis added).

Recognizing the commercial reality and the demands of fairness, DOE and industry should be working on this issue collaboratively. DOE has proposed that its test procedure be amended to incorporate the correction factor. Unfortunately, unless DOE provides relief in the interim by procedure revision or waiver, industry will suffer from a test procedure that DOE acknowledges is inaccurate and that is harmful with no benefit to the public.

Accordingly, with this petition, AHAM requests temporary enforcement forbearance, or in the alternative, a

temporary industry-wide waiver or guidance, to allow use of the data correction factor for room air conditioners. This relief would be automatically superseded by the effective date of the new DOE test procedure.

AHAM looks forward to meeting with DOE at the earliest opportunity to discuss this important matter.

[FR Doc. 2010–29773 Filed 11–24–10; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1397]

RIN AD 7100–58

Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities

AGENCY: Board of Governors of the Federal Reserve System ("Board").

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is requesting comment on a proposed rule that would implement the conformance period during which banking entities and nonbank financial companies supervised by the Board must bring their activities and investments into compliance with the prohibitions and restrictions on proprietary trading and relationships with hedge funds and private equity funds imposed by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 619 is commonly referred to as the "Volcker Rule."

DATES: *Comments:* Comments should be received on or before January 10, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1397 and RIN No. AD 7100–58, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include Docket Number R–1397 and RIN AD 7100–58 in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Brian P. Knestout, Senior Attorney, (202) 452–2249, Jeremy R. Newell, Senior Attorney, (202) 452–3239, Christopher M. Paridon, Senior Attorney, (202) 452–3274, or Kieran J. Fallon, Associate General Counsel, (202) 452–5270, Legal Division; David K. Lynch, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[1] Section 619 of the Dodd-Frank Act adds a new section 13 to the Bank Holding Company Act of 1956 ("BHC Act") (to be codified at 12 U.S.C. 1851) that generally prohibits banking entities[2] from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund.[3] The new section 13 of the BHC Act also provides for nonbank financial companies supervised by the Board that engage in such activities or have such investments to be subject to additional capital requirements, quantitative limits, or other restrictions.[4] These prohibitions and other provisions of section 619 are commonly known, and referred to herein, as the "Volcker Rule."

Specifically, the Volcker Rule prohibits banking entities from engaging in proprietary trading (as defined by the Volcker Rule) or from acquiring or retaining any ownership interest in, or sponsoring, a hedge fund or private equity fund.[5] The Volcker Rule, however, also expressly provides certain exceptions from these prohibitions, including, among others, exceptions that allow a banking entity, subject to certain terms, conditions, and restrictions, to: (i) Trade in obligations of the United States or any agency thereof, obligations issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*), and obligations of any State or of any political subdivision thereof;[6] (ii) purchase and sell securities and other instruments in connection with underwriting or market-making related activities, to the extent that any such activities are designed not to exceed the reasonable near term demands of clients, customers, or counterparties;[7] (iii) engage in risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings;[8] and (iv) purchase, sell, acquire, or dispose of securities and other instruments on behalf of customers.[9] Additionally, the Volcker Rule permits the appropriate agency or agencies, by rule, to grant other exceptions from the prohibitions on proprietary trading and investing in, or

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010).

[2] The term "banking entity" is defined in section 13(h)(1) of the BHC Act, as amended by section 619 of the Dodd-Frank Act. *See* 12 U.S.C. 1851(h)(1). The term means any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing.

[3] The Volcker Rule defines the terms "hedge fund" and "private equity fund" as an issuer that would be an investment company, as defined under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or any such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission ("CFTC") may, by rule, determine should be treated as a hedge fund or private equity fund. *See* 12 U.S.C. 1851(h)(2).

[4] *See* 12 U.S.C. 1851(a)(2) and (f)(4). A "nonbank financial company supervised by the Board" is a nonbank financial company or other company that has been designated by the Financial Stability Oversight Council ("FSOC") under section 113 of the Dodd-Frank Act as requiring supervision and regulation by the Board on a consolidated basis because of the danger such company may pose to the financial stability of the United States.

[5] 12 U.S.C. 1851(a)(1)(A) and (B).

[6] *Id.* at § 1851(d)(1)(A).

[7] *Id.* at § 1851(d)(1)(B).

[8] *Id.* at § 1851(d)(1)(C).

[9] *Id.* at § 1851(d)(1)(D).

sponsoring, a hedge fund or private equity fund if the agency(ies) determine that the exception would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.[10] However, no transaction, class of transactions, or activity may be permitted if the relevant agency(ies) determine that the transaction, class of transactions, or activity would: (i) Result in a material conflict of interest; (ii) result in a material exposure of the banking entity to high-risk assets or high-risk trading strategies; (iii) pose a threat to the safety and soundness of the banking entity; or (iv) pose a threat to the financial stability of the United States.[11]

The Volcker Rule separately prohibits a banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, and any affiliate of the banking entity, from entering into any transaction with the fund, or any other hedge fund or private equity fund controlled by such fund, that would be a "covered transaction" as defined in section 23A of the Federal Reserve Act,[12] as if such banking entity or affiliate were a member bank and the hedge fund or private equity fund were an affiliate thereof.[13] There are, however, certain exceptions to this prohibition.[14]

The Volcker Rule does not prohibit nonbank financial companies supervised by the Board from engaging in proprietary trading, or from having the types of investments in or relationships with hedge funds or private equity funds that banking entities are prohibited or restricted from having under the Volcker Rule. However, the Volcker Rule provides for the Board or other appropriate agency to impose additional capital charges, quantitative limits, or other restrictions on nonbank financial companies supervised by the Board or their subsidiaries that are engaged in such activities or maintain such relationships.[15]

The Board and several other agencies have responsibilities with respect to the Volcker Rule. The FSOC is required to conduct a study and make recommendations by January 21, 2011, on the implementation of the Volcker Rule.[16] As a general matter, authority for developing and adopting regulations to implement the prohibitions and restrictions of the Volcker Rule is divided between the Board, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the CFTC and the SEC in the manner provided in section 13(b)(2) of the BHC Act.[17] The Board and these other agencies are directed to adopt implementing rules not later than 9 months after the FSOC completes its study.[18] The restrictions and prohibitions of the Volcker Rule become effective 12 months after issuance of final rules by the agencies, or July 21, 2012, whichever is earlier.

The Board, however, is solely charged with adopting rules to implement the provisions of the Volcker Rule that provide a banking entity or a nonbank financial company supervised by the Board a period of time *after* the effective date of the Volcker Rule to bring the activities, investments, and relationships of the banking entity or company commenced, acquired, or entered into before the Volcker Rule's effective date into compliance with the Volcker Rule and the agencies' implementing regulations.[19] This period is intended to give markets and firms an opportunity to adjust to the Volcker Rule.[20] The Dodd-Frank Act requires that the Board issue rules to implement this conformance period no later than January 21, 2011.

II. Overview of Proposed Rule

In accordance with the mandate of the Dodd-Frank Act, the Board is requesting comment on a proposed rule that would implement the conformance period provisions of the Volcker Rule. The proposed rule does *not* address other aspects of the Volcker Rule which, as noted above, are subject to separate rulemaking requirements under section 13(b)(2) of the BHC Act.[21] Because the proposed rule is not intended to address the definitional and other issues that are appropriately the subject of that coordinated, interagency rulemaking process, the proposed rule incorporates without modification the definitions of "banking entity," "hedge fund," and "private equity fund" contained in the Dodd-Frank Act.[22] In addition, the Board has structured the proposed rule to address only those matters that are essential to implementation of the conformance period provisions of the Volcker Rule.

In developing this proposal, the Board considered, among other factors, the language and legislative history of the Dodd-Frank Act and the Volcker Rule, and the Board's experience in supervising and regulating banking entities' trading activities and investments in, or relationships with, hedge funds and private equity funds. The Board also consulted with the Department of the Treasury, the OCC, the FDIC, the SEC, and the CFTC. The Board invites public comment on all aspects of its proposal implementing the conformance period.

A. General Conformance Period

As noted above, the prohibitions and restrictions of the Volcker Rule do not take effect until the earlier of July 21, 2012, or 12 months after the issuance of final regulations by the rulewriting agencies under section 13(b)(2) of the BHC Act. However, in order to allow the markets and firms to adjust to these prohibitions and restrictions, the Volcker Rule also, by its terms and without any action by the Board, provides banking entities and nonbank financial companies supervised by the Board an additional conformance period during which the entity or company can wind down, sell, or otherwise conform its activities, investments, and relationships to the requirements of the Volcker Rule. Under the statute, this conformance period generally extends through the date that is 2 years after the date on which the prohibitions become effective or, in the case of a nonbank financial company supervised by the Board, 2 years after the company is designated by the FSOC for supervision by the Board, if that period is later.

Section 225.181(a) of the proposed rule implements these provisions. In addition, section 225.181(a)(2) of the proposed rule clarifies how the conformance period applies to a company that first becomes a banking entity after July 21, 2010 (the date of enactment of the Dodd-Frank Act), because, for example, the company acquires or becomes affiliated with an insured depository institution for the first time. In these circumstances, the restrictions and prohibitions of the Volcker Rule would first become effective with respect to the company only at the time it became a banking entity. Accordingly, the proposed rule

[10] *Id.* at § 1851(d)(1)(J).

[11] *See id.* at § 1851(d)(2).

[12] *See* 12 U.S.C. 371c.

[13] 12 U.S.C. 1851(f)(1).

[14] *See id.* at § 1851(f)(3).

[15] *See id.* at § 1851(a)(2), (d)(4).

[16] *See id.* § 1851(b)(1). The FSOC recently requested public comment on a number of issues to assist the FSOC in conducting its study. *See* 75 FR 61,758 (Oct. 6, 2010).

[17] *See* 12 U.S.C. 1851(b)(2). The Secretary of the Treasury, as Chairperson of the FSOC, is responsible for coordinating the agencies' rulemakings under the Volcker Rule. *See id.* at § 1851(b)(2)(B)(ii).

[18] *See id.* at § 1851(b)(2)(A).

[19] *See id.* at § 1851(c)(6).

[20] *See* 156 Cong. Rec. S5898 (daily ed. July 15, 2010) (Statement of Senator Merkley).

[21] *See id.* at § 1851(b)(2).

[22] Proposed Rule 225.180(a)–(c).

provides that such a company generally must bring its activities, investments, and relationships into compliance with the requirements of the Volcker Rule before the later of: (i) The date the Volcker Rule's prohibitions would otherwise become effective with respect to the company under section 225.181(a)(1) of the Proposed Rule; or (ii) 2 years after the date on which the company first becomes a banking entity. Thus, for example, a company that first becomes a banking entity on January 1, 2015, would have until January 1, 2017, to bring its activities and investments into conformance with the requirements of section 13 of the BHC Act and its implementing regulations. This proposal provides comparable treatment to "new" banking entities and nonbank financial companies supervised by the Board, and is consistent with the manner in which newly established bank holding companies are treated for purposes of the nonbanking restrictions under section 4 of the BHC Act.[23]

B. Extension of Conformance Period

The Volcker Rule permits the Board, by rule or by order, to extend the generally available two-year conformance period by up to three additional one-year periods, for an aggregate conformance period of 5 years.[24] Section 225.181(a)(3) of the proposed rule implements this authority. In order to grant any extension, the Board must determine that the extension is consistent with the purposes of the Volcker Rule and would not be detrimental to the public interest. The proposed rule requires that any banking entity that seeks a one-year extension of the conformance period under this authority submit a request to the Board. Any such request for an extension must: (1) Be submitted in writing to the Board at least 90 days prior to the expiration of the applicable time period; (2) provide the reasons why the banking entity believes the extension should be granted; and (3) provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s).

In addition, the proposed rule provides that any extension request by a banking entity must address each of the following matters (to the extent they are relevant): (i) Whether the activity or investment (A) involves or results in material conflicts of interest between the banking entity and its clients, customers or counterparties; (B) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies; (C) would pose a threat to the safety and soundness of the banking entity; or (D) would pose a threat to the financial stability of the United States; (ii) market conditions; (iii) the nature of the activity or investment; (iv) the date that the banking entity's contractual obligation to make or retain an investment in the fund was incurred and when it expires; (v) the contractual terms governing the banking entity's interest in the fund (if applicable); (vi) the degree of control held by the banking entity over investment decisions of the fund (if applicable); (vii) the types of assets held by the fund (if applicable); (viii) the date on which the fund is expected to wind up its activities and liquidate or its investments may be redeemed or sold (if applicable); (ix) the total exposure of the banking entity to the activity or investment and the risks that disposing of, or maintaining, the investment or activity may pose to the banking entity or the financial stability of the United States; (x) the cost to the banking entity of disposing of the activity or investment within the applicable period; and (xi) any other factor that the Board believes appropriate. Under the proposal, the Board would consider requests for an extension in light of all relevant facts and circumstances, including the factors described above. These factors are not exclusive, and under the proposal, the Board retains the ability to consider other factors or considerations that it deems appropriate. The Board specifically requests comment on whether these factors are appropriate, certain factors should be removed, or any additional factors should be included.

The proposed rule would allow the Board to impose conditions on any extension granted under the proposed rule if the Board determines such conditions are necessary or appropriate to protect the safety and soundness of banking entities or the financial stability of the United States, address material conflicts of interest or other unsound practices, or otherwise further the purposes of section 13 of the BHC Act and the proposed rules.[25] In cases where the banking entity is primarily supervised by another Federal banking agency, the SEC, or the CFTC, the Board would consult with such agency both in connection with its review of the application and, if applicable, prior to imposing conditions in connection with the approval of any request by the banking entity for an extension of the conformance period under the proposed rule.

C. Extended Transition Period for Illiquid Funds

Section 619 of the Dodd-Frank Act includes a special provision to address the difficulty banking entities may experience in conforming investments in illiquid funds. This provision expressly permits a banking entity to request the Board's approval for an additional extension of up to 5 years in order to permit the banking entity to meet contractual commitments in place as of May 21, 2010, to a hedge fund or private equity fund that qualifies as an "illiquid fund." Specifically, the statute provides that the Board may extend the period during which a banking entity may take or retain an ownership interest in, or otherwise provide additional capital to, an illiquid fund, but only if the extension is necessary to allow the banking entity to fulfill a contractual obligation that was in effect on May 1, 2010.[26] Any extended transition period with respect to an illiquid fund may not exceed 5 years and may be in addition to the conformance period available under other provisions of the Volcker Rule.[27] However, any extended transition period granted with respect to an illiquid fund, by statute, automatically terminates on the date during any such extension on which the banking entity is no longer under a contractual obligation to invest in, or provide capital to, the illiquid fund. The purpose of this extended transition or "wind-down" period for investments in an illiquid fund is to minimize disruption of existing investments in illiquid funds and permit banking entities to fulfill existing obligations to illiquid funds while still steadily moving banking entities toward conformance with the prohibitions and restrictions of the Volcker Rule.[28]

Section 225.181(b) of the proposed rule implements the statute's extended transition period for illiquid funds. As a general matter, to qualify for the statute's extended transition period a banking entity's investment in, or relationship with, a hedge fund or private equity fund must meet two sets of criteria. The first set of criteria

[23] *See* 12 U.S.C. 1843(a)(2).

[24] 12 U.S.C. 1851(c)(2).

[25] Nothing in the Volcker Rule or the proposed rule limits or otherwise affects the authority that the Board, the other Federal banking agencies, the SEC, or the CFTC may have under other provisions of law. In the case of the Board, these authorities include, but are not limited to, section 8 of the Federal Deposit Insurance Act and section 8 of the BHC Act. *See* 12 U.S.C. 1818, 1847.

[26] *Id.* at § 1851(c)(3)(A).

[27] *Id.* at § 1851(c)(3)(B).

[28] *See* 156 Cong. Rec. S5899 (daily ed. July 15, 2010) (statement of Sen. Merkley).

focuses on the nature, assets and investment strategy of the hedge fund or private equity fund itself. The second set of criteria focuses on the terms of the banking entity's investment in the hedge fund or private equity fund.

1. Fund-Focused Criteria

As noted above, the extended transition period under section 13(c)(3) of the BHC Act is available only with respect to investments made in an "illiquid fund," and then only with respect to investments in or commitments to these funds made as of May 1, 2010. In accordance with the text of the Volcker Rule, the proposed rule defines an "illiquid fund" to mean a hedge fund or private equity fund that: (i) As of May 1, 2010, was principally invested in illiquid assets, *or* was invested in, and contractually committed to principally invest in, illiquid assets; and (ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.[29] In determining how to implement the definition of an illiquid fund, the Board considered, among other things, the terms of the statute, as well as information (including confidential supervisory information) concerning the terms of investments in hedge funds or private equity funds, the characteristics of liquid and illiquid assets, and the ability of a fund to divest assets held by the fund.

The proposed rule defines several terms that are integral to the statute's definition of an illiquid fund, including the terms or phrases "illiquid asset," "principally invested" in illiquid assets, "contractually committed to principally invest" in illiquid assets, and "investment strategy to principally invest" in illiquid assets.

a. "*Illiquid Asset.*"

The proposed rule generally defines an "illiquid asset" as any asset that is not a liquid asset. In turn, "liquid assets" are defined to include:

- Cash or cash equivalents;
- An asset that is traded on a recognized, established exchange, trading facility or other market on which there exist independent, bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for the asset almost instantaneously;
- An asset for which there are bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system or similar system or for which multiple dealers furnish bona fide, competitive bid and offer quotations to other brokers and dealers on request;
- An asset the price of which is quoted routinely in a widely disseminated publication that is readily available to the general public or through an electronic service that provides indicative data from real-time financial networks;
- An asset with an initial term of one year or less and the payments on which at maturity may be settled, closed-out, or paid in cash or one or more other liquid assets described above; and
- Any other asset that the Board determines, based on all the facts and circumstances, is a liquid asset.[30]

The standards contained in the second, third, and fourth standards above are based on existing standards in the Federal banking and securities laws that are designed to identify securities that are liquid and may be sold promptly at a price that is reasonably related to its fair value. Specifically, the second standard above is based in part on the SEC's definition of securities for which a "ready market" exists for purposes of the net capital rules applicable to broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act").[31] Similarly, the third standard above is based, in part, on the actions regularly taken by a "qualified OTC market maker" as defined in the SEC's Rule 3b–8, with respect to securities under the Exchange Act.[32] The fourth standard above is based, in part, on the criteria used to identify whether a security or other asset is a "marketable security" or a "liquid asset" for purposes of the Board's Regulation W governing transactions between member banks and their affiliates.[33] In each instance, the proposal represents a modification of the standards to reflect the broader range of financial instruments (including derivatives) or other assets that may be held by a hedge fund or private equity fund and that should be considered "liquid" if traded or quoted in the manner described. The Board has proposed using these standards (which are generally understood within the banking and financial services industries) to help promote ready and measurable compliance with the requirements of the Volcker Rule. These standards are designed to capture the wide range of instruments and assets (or their equivalents) that one actively or routinely trades on markets or trading facilities, as for which bid, offer or price quotations are widely available, and that, therefore, should be considered as liquid assets for purposes of the Volcker Rule's provision regarding illiquid funds. For example, these standards would treat as a liquid asset: (i) Equity and debt securities, derivatives, and commodity futures traded on a registered securities exchange, board of trade, alternative trading system, electronic trading platform or similar market that provides independent, bona fide offers to buy and sell; (ii) assets traded on an electronic inter-dealer quotation system, such as OTC Bulletin Board or the system maintained by PINK OTC Markets, Inc., as well as over-the-counter derivatives, debt securities (such as corporate bonds), and syndicated commercial loans for which active inter-dealer markets exist; and (iii) financial instruments for which indicative price data is supplied by an electronic service, such as Markit Group Limited.

The fifth standard is designed to capture instruments with a relatively short-term duration and that can be monetized or converted at maturity into a liquid asset. The Board recognizes that there may be situations where other, non-enumerated assets may be liquid even though they are not included in the standards contained in sections 225.181(h)(1)—(5) of the proposed rule. In order to address these situations, the Board has expressly retained the ability to determine that any other asset is a liquid asset, based on all the facts and circumstances.

On the other hand, consistent with the purpose of the Volcker Rule, this proposed approach to defining illiquid assets should include as illiquid assets investments in portfolio companies, investments in real estate (other than those made through publicly traded REITs), venture capital investments, and investments in other hedge funds or private equity funds that both are not publicly traded *and* invest in illiquid assets. The proposed rule also provides that an asset—including a liquid asset such as a security—may be considered an "illiquid asset" if, because of statutory or regulatory restrictions applicable to the hedge fund, private equity fund or asset, the asset cannot be offered, sold, or otherwise transferred by the hedge fund or private equity fund to a person that is unaffiliated with the banking entity. This approach recognizes situations where, for example, a security held by a fund is subject to one or more statutory or regulatory restrictions under the Federal securities laws (such as under Rule 144A of the Securities Act of 1933

[29] Proposed Rule 225.180(e).

[30] Proposed Rule 225.180(h).

[31] *See* 15 CFR 240.15c3–1(c)(11)(i).

[32] *See* 15 CFR 240.3b–8(a).

[33] *See* 12 CFR 223.42(e) and (f)(5).

regarding private resales of securities to institutions) that temporarily prohibit the transferability or resale of the security.[34] However, the proposed rule expressly provides that an asset may be considered an illiquid asset under this provision only for so long as and to the extent that the relevant statutory or regulatory restriction is effective.[35] Once the relevant statutory or regulatory restriction is no longer applicable to the asset, hedge fund, or private equity fund, the asset would cease to be treated as an illiquid asset and would be a "liquid asset" if it met any of the standards contained in sections 225.181(g)(1)–(6) of the proposed rule.

The Board is interested in receiving comments on the appropriateness of the definitions and standards mentioned above, as well as whether there are particular types of assets that should be defined, by rule, as liquid or illiquid. If so, what types of assets would these be?

b. "*Principally invested*."

The statute's fund-related criteria also require that the hedge fund or private equity fund either (1) have been principally invested in illiquid assets as of May 1, 2010, or (2) have been invested to some degree in illiquid assets and contractually committed to principally invest in illiquid assets as of such date. In addition, in either case, the fund must make all of its investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.

Many types of hedge funds and private equity funds have investment strategies that focus almost exclusively on one type of illiquid assets, such as real estate or start-up companies (including new or emerging companies in the technology, life sciences, alternative energy, or "clean tech" areas).[36] These types of hedge funds and private equity funds typically request capital contributions from their investors only when particular investment opportunities have been identified and hold only a small portion of their assets in cash or other liquid assets (other than during brief periods pending the investment of capital or the distribution of proceeds from the sale of an investment). By limiting the availability of the extended transition period to hedge funds or private equity funds that "principally invest" in and have an investment strategy to principally invest in illiquid assets, such as real estate, nonpublic portfolio companies, and venture capital opportunities, Congress appears to have structured the extended transition period for those types of funds that are clearly focused on, and invest substantially all of their capital in, illiquid assets.

Accordingly, the proposed rule provides that a hedge fund or private equity fund will be considered to be "principally invested" in illiquid assets only if at least 75 percent of the fund's consolidated total assets are, or are expected to be, comprised of illiquid assets or risk-mitigating hedges entered into in connection with, and related to, individual or aggregated positions in, or holdings of, illiquid assets.[37] The proposal would allow a fund to count risk-mitigating hedging positions that are related to the fund's holdings of illiquid assets towards the 75 percent asset test because such positions are, by definition, associated with the fund's illiquid holdings. In addition, this approach is consistent with safe and sound risk-management practices and other provisions of the Volcker Rule.[38]

The proposed rule also provides that a fund will be considered "contractually committed to principally invest" in illiquid assets as of May 1, 2010, if the fund's organizational documents (such as the limited partnership agreement in the case of a fund organized in this manner), or other documents that constitute a contractual obligation of the fund (such as a binding side letter agreement entered into with investors) that was in effect as of May 1, 2010, provide for the fund to be principally invested in illiquid assets during the period beginning on the date when capital contributions are first received by the fund for the purpose of making investments and ending on the fund's expected termination date.[39] This definition is intended to recognize that an illiquid fund may have more than 25 percent of its assets in liquid assets (such as cash or money market instruments) during its initial pre-investment organizational period, while the fund seeks to meet its investment objective of investing principally in illiquid assets.

Additionally, the proposed rule provides that a fund would be considered to have an "investment strategy to principally invest" in illiquid assets if the fund either: (i) Markets or holds itself out to investors as intending to principally invest in illiquid assets; or (ii) has a documented investment policy of principally investing in illiquid assets.[40] In considering whether a hedge fund or private equity fund's organizational documents, marketing materials, or investment policy provide for the fund to principally invest in illiquid assets, banking entities should consider whether the assets to be acquired by the fund (as specified in such materials) are of the type and nature that would make the assets "illiquid assets" or "liquid assets" for purposes of the rule. For example, under the proposal, if a fund's investment strategy provides for the fund to primarily invest in publicly traded stocks or OTC derivatives that are regularly bought and sold in the inter-dealer market, the fund would not be considered to have an investment strategy to principally invest in illiquid assets. This would be the case even if the fund's investment strategy did not indicate that the assets acquired by the fund must be traded on a recognized exchange, trading facility, or market of the type described in section 225.180(h)(2) or quoted on inter-dealer systems of the type described in section 225.180(h)(3). Likewise, under the proposal, a fund generally would be considered to be contractually committed to invest in illiquid assets if the fund's organizational documents provide for the fund to invest in the equity of early-stage nonpublic companies, even if the fund's documents do not specify that the equity of such companies must not be traded or quoted in the manner described in section 225.180(h)(2)–(4).

The Board is interested in receiving comments on the appropriateness of these criteria and on whether there are other indicia of being "contractually committed to principally invest," or having an "investment strategy to principally invest," in illiquid assets that would better achieve the Volcker Rule's objectives.

2. Criteria Focused on the Banking Entity's Investment

Besides meeting the criteria described above, a banking entity's interest in a hedge fund or private equity fund qualifies for the extended transition period in section 13(c)(3) of the BHC Act only if the banking entity's retention of that ownership interest in the fund, or provision of additional capital to the fund, is necessary to fulfill a contractual

[34] *See* 15 CFR 230.144a.

[35] Proposed Rule 225.180(g)(2).

[36] Accordingly, institutional investors, such as pension plans and endowments, that seek exposure to different types of assets typically invest in a range of different types of hedge funds or private equity funds to obtain diversification across asset classes.

[37] Proposed Rule 225.180(i).

[38] *See* 12 U.S.C. 1851(d)(1)(C). The Board expects to interpret the language concerning risk-mitigating hedges consistent with the manner in which such language is implemented through the rulemaking process conducted under section 13(b)(2) of the BHC Act.

[39] Proposed Rule 225.180(i)(2).

[40] Proposed Rule 225.180(i)(3).

obligation of the banking entity that was in effect on May 1, 2010.[41] This statutory restriction complements and reinforces the fund-related criteria discussed above because a fund that is principally invested in *liquid* assets is unlikely to require its investors to commit to remaining invested in the fund for, or provide additional capital over, an extended period of time.

The proposed rule provides that a banking entity will be considered to have a "contractual obligation" to remain invested in a fund only if the banking entity, under the contractual terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund that were in effect as of May 1, 2010, is prohibited from both: (i) Redeeming all of its equity, partnership, or other ownership interests in the fund; and (ii) selling or otherwise transferring all such ownership interests to a person that is not an affiliate of the banking entity.[42] Similarly, the proposed rule specifies that a banking entity has a contractual obligation to provide additional capital to an illiquid fund only if the banking entity is required, under the contractual terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund that were in effect as of May 1, 2010, to provide additional capital to the fund.

In the Board's experience, to the extent that contractual obligations described above exist between a banking entity and a hedge fund or private equity fund, such obligations often may be waived with the consent of the general partner and/or the other investors in the fund. To address these situations, the proposed rule provides that either of the contractual obligations described above will not be considered to be in effect with respect to a banking entity if: (i) The obligation may be terminated by the banking entity or any of its subsidiaries or affiliates; or (ii) the obligation may be terminated with the consent of other persons *unless* the banking entity and its subsidiaries and affiliates have used their reasonable best efforts to obtain such consent and such consent has been denied.[43] These provisions are intended to ensure that the banking entity's obligation to remain invested in, or provide additional capital to, a fund cannot be terminated by the banking entity itself or through its reasonable best efforts.

The Board invites comments on the appropriateness of the criteria contained in the definition. For example, are there other ways to define a "contractual obligation" that would better achieve the objectives of the Volcker Rule's conformance period?

3. Application for Extended Transition Period

Under section 619 of the Dodd-Frank Act, a banking entity may take advantage of the extended transition period with respect to an investment in a qualifying illiquid fund only with the approval of the Board. Section 225.181(b) of the proposed rule implements this requirement. A banking entity that seeks an extended transition period with respect to an illiquid fund must submit a request to the Board in accordance with the requirements of section 225.181(c). Any request must address the factors specified in section 225.181(d) of the proposed rule, as described in Part II above. The Board expects to carefully review requests for an extended transition period to ensure that the banking entity's interest in the fund and the fund's assets and investment strategy satisfy the requirements contained in the rule in order to be eligible for an extended transition period. As noted above, in cases where the banking entity is primarily supervised by another Federal banking agency, the SEC, or the CFTC, the Board would consult with such agency both in connection with its review of the application and, if applicable, prior to imposing conditions in connection with the approval of any request by the banking entity seeking an extended transition period with respect to an illiquid fund under the proposed rule.

As provided in the Volcker Rule, the Board may grant a banking entity only one extended transition period with respect to any illiquid fund, which may not exceed 5 years.[44] The Volcker Rule expressly states that any extended transition period will automatically terminate (unless it already expired by its terms) on the date on which the contractual obligation to invest in, or provide additional capital to, the illiquid fund terminates.[45] Section 225.181(b)(2)(ii) implements this termination requirement.

4. Exception for Private Equity Funds as Defined Under the Investment Advisors Act of 1940

Section 13(h)(7)(B) of the BHC Act provides that, for purposes of the definition of an "illiquid fund," the term "hedge fund" shall not include a "private equity fund," as such term is used in section 203(m) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(m)).[46] However, section 203(m) of the Investment Advisors Act, as added by section 408 of the Dodd-Frank Act, does not contain a definition of, nor does it use the term, "private equity fund." Moreover, Congress' intent in adopting this exclusion is unclear. For example, a fund that invests primarily in nonpublic portfolio companies, which are commonly referred to in the investment community as "private equity funds," appears to be the type of fund that the Volcker Rule intended to potentially qualify as an "illiquid fund." As noted earlier, the Volcker Rule specifically includes investments in "portfolio companies" as an example of an "illiquid asset," one of the key terms used to define an "illiquid fund."

In any event, the Board does not believe that it is necessary to resolve the ambiguity surrounding this provision because the exclusion would not have any effect on the ability of a fund to qualify as an illiquid fund. This is because the Volcker Rule defines a "hedge fund" and a "private equity fund" synonymously.[47] Thus, any illiquid fund that would have been excluded from the definition of "hedge fund" because it met the missing definition of a "private equity fund" in the Investment Advisors Act could still qualify for the extended conformance period afforded to illiquid funds as a "private equity fund" under the Volcker Rule itself.

D. Nonbank Financial Companies Supervised by the Board

As noted above, the Volcker Rule does not prohibit nonbank financial companies supervised by the Board from engaging in proprietary trading, or from having the types of investments in or relationships with hedge funds or private equity funds that banking entities are prohibited or restricted from having under the Volcker Rule. However, the Volcker Rule provides that the Board or other appropriate agency impose additional capital charges, quantitative limits, or other restrictions on nonbank financial companies supervised by the Board or their

[41] 12 U.S.C. 1851(c)(3)(A).

[42] Proposed Rule 225.181(b)(3)(i).

[43] Proposed Rule 225.181(b)(3)(iii)(A) and (B).

[44] The statute provides that a banking entity may apply for a single extension with respect to an illiquid fund, and that such extension may not exceed 5 years. In light of the statutory language, the Board retains the right to grant an extended transition period of less than 5 years if, based on all the facts and circumstances, it determines such extension is appropriate.

[45] *Id.* at § 1851(c)(4).

[46] *See* 12 U.S.C. 1851(h)(7)(B).

[47] 12 U.S.C. 1851(h)(2).

subsidiaries that are engaged in such activities or maintain such relationships.[48] Like banking entities, the Volcker Rule provides a nonbank financial company supervised by the Board two years after the date the company becomes a nonbank financial company supervised by the Board to conform its activities to any applicable requirements of the Volcker Rule, including any capital requirements or quantitative limitations adopted thereunder and applicable to the company. The Volcker Rule also provides the Board the ability to extend this two-year conformance period by up to three additional one-year periods.[49] Section 225.182 of the proposed rule implements the conformance period for nonbank financial companies supervised by the Board. A nonbank financial company supervised by the Board seeking an extension must submit a request to the Board under the same time frame as required of banking entities.

III. Request for Comments

The Board invites comments on all aspects of the proposed rule. Comments are specifically requested on the following matters:

1. Are the definitions contained in the proposed rule appropriate? Would other definitions be more consistent with the language or purposes of the Volcker Rule?

2. Is the proposed requirement that at least 75 percent of a fund's assets be "illiquid assets" or related hedges appropriate in order for a fund to meet the definition of "principally invested"? Would an alternative number, metric, or other indicia be more consistent with the purposes of the Volcker Rule?

3. Are the enumerated criteria for determining what qualifies as a "liquid asset" appropriate? If not, what additional or alternative metrics or screens should the Board consider?

4. Are there particular types of assets that should be defined, by rule, as illiquid? If so, what types of assets would these be? Would the assets generally be considered illiquid assets under the terms of the proposed rule?

5. What will the potential impact of the proposed rule be on affected entities?

6. Are there any additional factors that the Board should consider in reviewing a request for an extension of the conformance period? Are there additional factors that the Board should consider in reviewing a request for an extension with respect to an illiquid fund?

7. Are there specific additional conditions or limitations that the Board should, by rule, impose in connection with granting an extension of the conformance period? If so, what conditions or limitations would be appropriate? Alternatively, should the Board and the other Federal agencies responsible for implementing the Volcker Rule consider what conditions or limitations might be appropriate to apply to prohibited activities that are conducted during the conformance period (including any extension thereof) on a tailored or case-by-case basis?

8. Are there other matters that the Board should address as part of the conformance period rulemaking required by section 13(c)(6) of the BHC Act?

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 ("PRA"),[50] the Board reviewed the proposed rule under the authority delegated to the Board by Office of Management and Budget ("OMB"). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Sections 225.181(c) and 225.182(c) of the proposed rule contain collections of information that are subject to the PRA. The OMB control number for these information collections will be assigned. These collections of information would only be required for banking entities and nonbank financial companies supervised by the Board that voluntarily decide to seek an extension of time to conform their activities to the Volcker Rule or divest their interest in an illiquid hedge fund or private equity fund. As discussed in the Supplementary Information, the Dodd-Frank Act generally requires banking entities and nonbank financial holding companies supervised by the Board to conform their activities and investments to the restrictions in the Volcker Rule within 2 years of the effective date of the Volcker Rule's restrictions. The proposed rule implements this conformance period and, as permitted by the Dodd-Frank Act, permits a banking entity or nonbank financial company supervised by the Board to request an extension of time to conform its activities to the Volcker Rule. Section 225.181(c) would require an application for an extension by a banking entity to be (1) submitted in writing to the Board at least 90 days prior to the expiration of the applicable time period, (2) provide the reasons why the banking entity believes the extension should be granted, and (3) provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s). Section 225.182(c) would require an application for an extension by a nonbank financial holding company to be (1) submitted in writing to the Board at least 90 days prior to the expiration of the applicable time period, (2) provide the reasons why the nonbank financial holding company believes the extension should be granted, and (3) provide a detailed explanation of the company's plan for coming into compliance with the requirements of the Volcker Rule. A banking entity or nonbank financial company supervised by the Board may request confidential treatment of information submitted as part of an extension request in accordance with the Freedom of Information Act.

The estimated burden per request is 1 hour. It is estimated that there were approximately 7,200 banking entities as of December 31, 2009. Of that number, the Board estimates that approximately 720 banking entities would request an extension of the conformance period under the proposed rule. Therefore, the total amount of annual burden is estimated to be 720 hours. The number of nonbank financial companies supervised by the Board will be determined by the FSOC in accordance with the procedures established under the Dodd-Frank Act. Accordingly, the Board is unable at this time to estimate the number of nonbank financial companies supervised by the Board that might request an extension of the Volcker Rule conformance period under the proposed rule.

Comments are invited on:

(a) Whether the information collection is necessary for the proper performance of the agency functions; including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the cost of compliance;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

[48] *See* 12 U.S.C. 1851(a)(2), (d)(4).

[49] 12 U.S.C. 1851(c)(2).

[50] 44 U.S.C. 3506; 5 CFR 1320, Appendix A.1.

B. Initial Regulatory Flexibility Act Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* ("RFA"), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment in the following areas. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

The Volcker Rule, adopted as a new section 13 of the BHC Act, applies to all banking entities and nonbank financial companies supervised by the Board, regardless of size. The Board is proposing to amend Regulation Y to implement the provisions of the Dodd-Frank Act that allow a banking entity—including a small banking entity—or a nonbank financial company supervised by the Board to obtain, with the Board's approval, an extended period of time to conform its activities and investments to the requirements of the Volcker Rule. Under the proposed rule, a banking entity of any size may request up to three one-year extensions of the general two-year conformance period provided under section 13 of the BHC Act, as well as one extension of up to five years to divest certain ownership interests in a hedge fund or private equity fund that qualifies as an "illiquid fund" under the statute and proposed rule. The **SUPPLEMENTARY INFORMATION** provides additional information regarding the reasons for, and the objective and legal basis of, the proposed rule.

Under regulations issued by the Small Business Administration ("SBA"), a bank or other depository institution is considered "small" if it has $175 million or less in assets.[51] As of December 31, 2009, there were approximately 2450 small bank holding companies, 293 small savings association, 132 small national banks, 73 small State member banks, 665 small State nonmember banks, and 21 small foreign banking organizations that are subject to section 8 of the International Banking Act of 1978. As of that date, there were no nonbank financial companies supervised by the Board. The Volcker Rule would affect only those entities that engage in activities or that hold investments prohibited or restricted under the terms of the Volcker Rule. As explained above, the Board estimates that of the total number of banking entities that would be affected by the Volcker Rule, approximately 10 percent would likely file an extension request under the proposed rule. Based on its supervisory experience, the Board believes that small banking entities are less likely to be engaged in the types of activities or hold investments prohibited under the Volcker Rule, and as such estimates that only 5 percent of small banking entities likely would file an extension request under the proposal. The Board specifically seeks comment on whether this estimate is appropriate. The Board notes that the impact of the proposal on entities choosing to take advantage of the proposal's extended conformance period provided under the proposed rule would be positive and not adverse. This is because the proposed rule would allow affected entities to seek and obtain an extended period of time to conform their activities, investments, or relationships to the requirements of the Volcker Rule. The Board also has taken several steps to reduce the potential burden of the proposed rule on all banking entities, including small banking entities. For example, the proposed rule establishes a straightforward process for banking entities, including small banking entities, to request an extension of the conformance period or an extended transition period with respect to an investment in an illiquid fund, and permits such requests to be submitted in letter form. The proposed rule also uses standards drawn from existing federal banking and securities regulations to help define the types of funds that may qualify as an "illiquid fund" under the statute and the proposed rule, which should assist small banking entities in determining whether their investments qualify for the extended transition period available for investments in illiquid funds.

As discussed in the **SUPPLEMENTARY INFORMATION**, the Dodd-Frank Act requires that the Board adopt rules implementing the Volcker Rule's conformance period by January 21, 2011. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. The Board requests comment on whether there are additional steps that the Board could take to reduce the potential burden on small banking entities consistent with the terms and purpose of section 13 of the BHC Act. The Board will carefully review any comments received on these issues during the public comment period.

Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the interim final rule easier to understand. For example, the Board requests comment on such questions as:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board proposes to amend Regulation Y, 12 CFR part 225, as set forth below:

Proposed Rules

The Board proposes to adopt rules under part 225 of Title 12, Chapter II of the Code of Federal Regulations, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1851, 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

[51] 13 CFR 121.201.

Subpart L—Conditions to Orders

2. Add a new subpart L heading as set forth above, and designate § 225.200 under subpart L.

3. Add Subpart K to part 225 to read as follows:

Subpart K—Proprietary Trading and Relationships with Hedge Funds and Private Equity Funds

Sec.
225.180 Definitions.
225.181 Conformance period for banking entities engaged in prohibited proprietary trading or private fund activities.
225.182 Conformance period for nonbank financial companies supervised by the board engaged in proprietary trading or private fund activities.

Subpart K—Proprietary Trading and Relationships with Hedge Funds and Private Equity Funds

§ 225.180 Definitions.

For purposes of this subpart:

(a) *Banking entity* means—

(1) Any insured depository institution;

(2) Any company that controls an insured depository institution;

(3) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and

(4) Any affiliate or subsidiary of any of the foregoing entities.

(b) *Hedge fund* and *private equity fund* mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)), determine.

(c) *Insured depository institution* has the same meaning as ordered to that term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), except that for purposes of this subpart the term shall not include an institution that functions solely in a trust or fiduciary capacity if—

(1) All or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(2) No deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(3) Such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(4) Such institution does not—

(i) Obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

(ii) Exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 416(b)(7)).

(d) *Nonbank financial company supervised by the Board* means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010 (12 U.S.C. 5311).

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Illiquid fund* means a hedge fund or private equity fund that as of May 1, 2010:

(1) Was principally invested in illiquid assets; or

(2) Was invested in, and contractually committed to principally invest in, illiquid assets; and

(3) Makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.

(g) *Illiquid assets* means any real property, security, obligation, or other asset that—

(1) Is not a liquid asset; or

(2) Because of statutory or regulatory restrictions applicable to the hedge fund, private equity fund or asset, cannot be offered, sold, or otherwise transferred by the hedge fund or private equity fund to a person that is unaffiliated with the relevant banking entity, *provided that* any asset may be considered an illiquid asset under this paragraph (g)(2) only for so long as such statutory or regulatory restriction is applicable.

(h) *Liquid asset* means:

(1) Cash or cash equivalents;

(2) An asset that is traded on a recognized, established exchange, trading facility or other market on which there exist independent, bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular asset almost instantaneously;

(3) An asset for which there are bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system or similar system or for which multiple dealers furnish bona fide, competitive bid and offer quotations to other brokers and dealers on request;

(4) An asset the price of which is quoted routinely in a widely disseminated publication that is readily available to the general public or through an electronic service that provides indicative data from real-time financial networks;

(5) An asset with an initial term of one year or less and the payments on which at maturity may be settled, closed-out, or paid in cash or one or more other liquid assets described in paragraphs (h)(1), (2), (3), or (4) of this section; and

(6) Any other asset that the Board determines, based on all the facts and circumstances, is a liquid asset.

(i) *Principally invested* and related definitions.—A hedge fund or private equity fund—

(1) Is *principally invested* in illiquid assets if at least 75 percent of the fund's consolidated total assets (as reflected on the fund's financial statements prepared in accordance with applicable accounting standards) are—

(i) Illiquid assets; or

(ii) Risk-mitigating hedges entered into in connection with and related to individual or aggregated positions in, or holdings of, illiquid assets;

(2) Is *contractually committed to principally invest* in illiquid assets if the fund's organizational documents, or other documents that constitute a contractual obligation of the fund, provide for the fund to be principally invested in assets described in paragraph (i)(1) of this section during the period beginning on the date when capital contributions are first received for the purpose of making investments and ending on the fund's expected termination date; and

(3) Has an *investment strategy to principally invest* in illiquid assets if the fund—

(i) Markets or holds itself out to investors as intending to principally invest in assets described in paragraph (i)(1) of this section; or

(ii) Has a documented investment policy of principally investing in assets described in paragraph (i)(1) of this section.

§ 225.181 Conformance period for banking entities engaged in prohibited proprietary trading or private fund activities.

(a) *Conformance period.* (1) *In general.*—Except as provided in paragraph (b)(2) or (3), a banking entity shall bring its activities and investments into compliance with the requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this

subpart no later than 2 years after the earlier of:

(i) July 21, 2012; or

(ii) 12 months after the date on which final rules adopted under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) are published in the **Federal Register**.

(2) *New banking entities.*—A company that was not a banking entity, or a subsidiary or affiliate of a banking entity, as of July 21, 2010, and becomes a banking entity, or a subsidiary or affiliate of a banking entity, after that date shall bring its activities and investments into compliance with the requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart before the later of—

(i) The conformance date determined in accordance with paragraph (a)(1) of this section; or

(ii) 2 years after the date on which the company becomes a banking entity or a subsidiary or affiliate of a banking entity.

(3) *Extended conformance period.* The Board may extend the two-year period under paragraph (a)(1) or (2) of this section by not more than three one-year periods, if, in the judgment of the Board, each such one-year extension is consistent with the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart and would not be detrimental to the public interest.

(b) *Illiquid funds.* (1) *Extended transition period.*—The Board may further extend the period provided by paragraph (a) of this section during which a banking entity may acquire or retain an equity, partnership, or other ownership interest in, or otherwise provide additional capital to, a private equity fund or hedge fund if—

(i) The fund is an illiquid fund; and

(ii) The acquisition or retention of such interest, or provision of additional capital, is necessary to fulfill a contractual obligation of the banking entity that was in effect on May 1, 2010.

(2) *Duration limited.* The Board may grant a banking entity only one extension under paragraph (b)(1) of this section and such extension—

(i) May not exceed 5 years beyond any conformance period granted under paragraph (a)(3) of this section; and

(ii) Shall terminate automatically on the date during any such extension on which the banking entity is no longer under a contractual obligation described in paragraph (b)(1)(ii) of this section.

(3) *Contractual obligation.* For purposes of this paragraph (b)—

(i) A banking entity has a contractual obligation to take or retain an equity, partnership, or other ownership interest in an illiquid fund if the banking entity is prohibited under the terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund from—

(A) Redeeming all of its equity, partnership, or other ownership interests in the fund; and

(B) Selling or otherwise transferring all such ownership interests to a person that is not an affiliate of the banking entity;

(ii) A banking entity has a contractual obligation to provide additional capital to an illiquid fund if the banking entity is required under the terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund to provide additional capital to such fund; and

(iii) A banking entity shall be considered to have a contractual obligation for purposes of paragraph (b)(3)(i) or (ii) of this section only if—

(A) The obligation may not be terminated by the banking entity or any of its subsidiaries or affiliates under the terms of its agreement with the fund; and

(B) In the case of an obligation that may be terminated with the consent of other persons, the banking entity and its subsidiaries and affiliates have used their reasonable best efforts to obtain such consent and such consent has been denied.

(c) *Approval required to hold interests in excess of time limit.* The conformance period in paragraph (a) may be extended in accordance with paragraph (a)(3) or (b)(1) of this section only with the approval of the Board. A banking entity that seeks the Board's approval for an extension of the conformance period under paragraph (a)(3) or for an extended transition period under paragraph (b)(1) of this section must—

(1) Submit a request in writing to the Board at least 90 days prior to the expiration of the applicable time period;

(2) Provide the reasons why the banking entity believes the extension should be granted, including information that addresses the factors in paragraph (d)(1) of this section; and

(3) Provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s).

(d) *Factors governing Board determinations.*

(1) *Extension requests generally.*—In reviewing any application for an extension under paragraph (a)(3) or (b)(1) of this section, the Board may consider all the facts and circumstances related to the activity, investment, or fund, including, to the extent relevant—

(i) Whether the activity or investment—

(A) Involves or results in material conflicts of interest between the banking entity and its clients, customers or counterparties;

(B) Would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(C) Would pose a threat to the safety and soundness of the banking entity; or

(D) Would pose a threat to the financial stability of the United States;

(ii) Market conditions;

(iii) The nature of the activity or investment;

(iv) The date that the banking entity's contractual obligation to make or retain an investment in the fund was incurred and when it expires;

(v) The contractual terms governing the banking entity's interest in the fund;

(vi) The degree of control held by the banking entity over investment decisions of the fund;

(vii) The types of assets held by the fund;

(viii) The date on which the fund is expected to wind up its activities and liquidate, or its investments may be redeemed or sold;

(ix) The total exposure of the banking entity to the activity or investment and the risks that disposing of, or maintaining, the investment or activity may pose to the banking entity or the financial stability of the United States;

(x) The cost to the banking entity of disposing of the activity or investment within the applicable period; and

(xi) Any other factor that the Board believes appropriate.

(2) *Consultation.* In the case of a banking entity that is primarily supervised by another Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, the Board will consult with such agency prior to the approval of a request by the banking entity for an extension under paragraph (a)(3) or (b)(1) of this section.

(e) *Authority to impose restrictions on activities or investments during any extension period.*

(1) *In general.* The Board may impose such conditions on any extension approved under paragraph (a)(3) or (b)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart.

(2) *Consultation.* In the case of a banking entity that is primarily supervised by another Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, the Board will consult with such agency prior to imposing conditions on the approval of a request by the banking entity for an extension under paragraph (a)(3) or (b)(1) of this section.

§ 225.182 Conformance period for nonbank financial companies supervised by the board engaged in proprietary trading or private fund activities.

(a) *Divestiture requirement.* A nonbank financial company supervised by the Board shall come into compliance with all applicable requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart, including any capital requirements or quantitative limitations adopted thereunder and applicable to the company, not later than 2 years after the date the company becomes a nonbank financial company supervised by the Board.

(b) *Extensions.* The Board may, by rule or order, extend the two-year period under paragraph (a) of this section by not more than three one-year periods, if, in the judgment of the Board, each such one-year extension is consistent with the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart and would not be detrimental to the public interest.

(c) *Approval required to hold interests in excess of time limit.* A nonbank financial company supervised by the Board that seeks the Board's approval for an extension of the conformance period under paragraph (b) of this section must—

(1) Submit a request in writing to the Board at least 90 days prior to the expiration of the applicable time period;

(2) Provide the reasons why the nonbank financial company supervised by the Board believes the extension should be granted; and

(3) Provide a detailed explanation of the company's plan for conforming the activity or investment(s) to any applicable requirements established under section 13(a)(2) or (f)(4) of the Bank Holding Company Act (12 U.S.C. 1851(a)(2) and (f)(4)).

(d) *Factors governing Board determinations.* In reviewing any application for an extension under paragraph (b) of this section, the Board may consider all the facts and circumstances related to the nonbank financial company and the request including, to the extent determined relevant by the Board, the factors described in § 225.181(d)(1).

(e) *Authority to impose restrictions on activities or investments during any extension period.* The Board may impose conditions on any extension approved under paragraph (b) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the nonbank financial company or the financial stability of the United States, address material conflicts of interest or other unsound practices, or otherwise further the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart.

By order of the Board of Governors of the Federal Reserve System, November 16, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–29277 Filed 11–24–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1278

RIN 2590–AA37

Voluntary Mergers of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Section 1209 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 26 of the Federal Home Loan Bank Act (Bank Act) to permit any Federal Home Loan Bank (Bank) to merge with another Bank with the approval of its board of directors, its members, and the Director of the Federal Housing Finance Agency (FHFA). This proposed rule would establish the conditions and procedures for the consideration and approval of voluntary Bank mergers.

DATES: Written comments must be received on or before January 25, 2011.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA37, by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA37" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include "RIN 2590–AA37" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA37, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA37, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John P. Foley, Senior Financial Analyst, Policy and Program Development, *john.foley@fhfa.gov,* (202) 408–2828 (this is not a toll-free number), Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; Eric M. Raudenbush, Assistant General Counsel, *eric.raudenbush@fhfa.gov,* (202) 414–6421 (this is not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

A. The Federal Home Loan Bank System

The twelve regional Banks are instrumentalities of the United States

organized under the Bank Act.[1] The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.[2] Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions.[3] Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock.[4]

B. HERA Provisions Addressing Voluntary Mergers

Section 1209 of HERA added new paragraphs (b)(1) and (b)(2) to section 26 of the Bank Act to address voluntary mergers of Banks. Section 26(b)(1) authorizes any Bank to merge voluntarily with another Bank with the approval of the Director of FHFA and the boards of directors of the Banks involved in the merger. Section 26(b)(2) requires FHFA to promulgate regulations establishing the conditions and procedures for the consideration and approval of voluntary mergers, including approval by Bank members.[5] The HERA amendments do not provide any further details about the terms on which Banks may merge or on which FHFA may approve such mergers.

As required by section 26(b)(2), the proposed rule would establish the conditions and procedures for the consideration and approval of voluntary mergers of Banks. The proposed rule does not relate to liquidations, reorganizations, conservatorships, or receiverships undertaken by the Director of FHFA pursuant to the authority set forth at section 26(a) of the Bank Act and section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).[6]

C. Considerations of Differences Between the Banks and the Enterprises

Section 1313 of the Safety and Soundness Act, as amended by HERA, requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the other Housing Enterprises (Fannie Mae and Freddie Mac): Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.[7] The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

III. The Proposed Rule

The proposed rule would add a new part 1278 to the regulations of FHFA to govern voluntary mergers of Banks. It would establish required procedures for Banks to follow in order to consummate a merger, including authorization by the merging Banks' boards of directors, ratification by the Banks' member institutions, and approval by the Director of FHFA. In developing the proposed rule, FHFA looked to governance practices that are common under general principles of corporate law, disclosure practices that are required under the federal securities laws, and the approval standards required under federal banking laws relating to mergers of insured depository institutions as guidance for the key provisions of this proposal. The substance of each provision of the proposed rule is described in the following paragraphs.

Section 1278.1—Definitions:

Proposed § 1278.1 sets forth definitions of terms used in proposed part 1278. As is discussed more thoroughly below, the terms "merge" and "merger" would be defined broadly to encompass not only a merger in legal form—that is, a combination of two or more Banks in which one Bank continues its corporate existence and the other Bank ceases to exist as a separate legal entity by operation of law—but also all other types of business combinations that could conceivably occur between or among Banks. The proposed definition expressly includes three common forms of business combination: A merger; a consolidation, where two or more Banks combine to form one or more entirely new Banks; and a purchase and assumption (P&A) transaction, in which one or more Banks acquire substantially all of the assets and assume substantially all of the liabilities of another Bank or Banks. The definition also would include a general provision to include any other type of business combination of two or more Banks into one or more resulting Banks.

The term "Constituent Bank" would be defined to refer to any existing Bank that is a party to a proposed merger—in other words, to any Bank as it exists prior to the consummation of the merger. The term "Continuing Bank" would refer to any Bank that exists as a result of a consummated merger, regardless of whether the Bank existed prior to the merger or is an entirely new Bank created as part of the merger. In order that the provisions of this part encompass the possibility of mergers resulting in more than one Continuing Bank, such as a P&A transaction in which two Banks each acquire a portion of the assets and liabilities of another Bank, the term would be defined to include its plural form even when used in the singular.

The term "Disclosure Statement" would refer to a written document that contains all of the items that must be included in a Form S–4 Registration Statement (Form S–4) under the Securities Act of 1933 (1933Act) (or any successor form promulgated by the United States Securities and Exchange Commission (SEC) governing disclosure required for securities issued in business combination transactions) when prepared as a prospectus as directed in Part I of the Form S–4.[8] As discussed in detail below, the proposed rule requires each Constituent Bank to provide such a Disclosure Statement to its members in connection with the required vote to ratify a merger agreement between Banks.

The term "Effective Date" would refer to the date on which a particular merger of Banks takes effect. Where more than two Constituent Banks propose to consummate a merger in multiple stages, the term "Effective Date" would refer to the date on which each of the component transactions takes effect.

Finally, proposed § 1278.1 would also include definitions for the short forms "Bank," "Bank Act," "Director," "FHFA," and "SEC."

Section 1278.2—Authority:

Proposed § 1278.2 provides that any two or more Banks may merge provided that the requirements of this part, as outlined in paragraphs (a) through (e), are met. As noted above, § 1278.1 would define "merge" broadly to include traditional mergers, consolidations, P&A transactions, and any other form of business combination in which two or

[1] *See* 12 U.S.C. 1423, 1432(a).

[2] *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

[3] *See* 12 U.S.C. 1427.

[4] *See* 12 U.S.C. 1424; 12 CFR part 1263.

[5] *See* 12 U.S.C. 1446(b)(1), (2).

[6] *See* 12 U.S.C. 1446(a), 4617.

[7] *See* 12 U.S.C. 4513.

[8] *See* 17 CFR 239.25.

more Banks could engage. The purpose of this broad definition would be to subject all contemplated business combinations between Banks to the approval process that would be established by this part. The breadth of the definition does not imply that FHFA would necessarily approve all types of mergers, but only that regulations contained in this part would not preclude proposed business combinations that involve something other than a legal merger. As provided in the remaining portions of this part, FHFA would consider the merits of each proposed transaction, regardless of its structure, on a case-by-case basis in deciding whether to approve the transaction.

Although the term "merger" technically refers to a transaction in which one business entity absorbs another entity, with the former continuing to exist after the consummation of the transaction, the term is also used in a broader sense to refer to any type of business combination, especially those between entities of comparable size.[9] The express authorization of "voluntary" mergers in section 26(b) of the Bank Act evidences a Congressional intent to permit the Banks to consider business combinations that could be of benefit to their members and to the Bank System as a whole. FHFA recognizes that, given the unique characteristics of the Banks as largely tax-exempt federally chartered cooperatives with limited powers, it is possible that the Banks will not have the same motivation as depository institutions or other business corporations to engage in business combinations other than legal mergers. For example, while P&A transactions are often undertaken as a vehicle to achieve particular tax effects, or to avoid transferring some assets or liabilities, these considerations may not be applicable in Bank mergers. In any case, it is possible that Banks may determine that other business combination structures may have legal or business advantages over a legal merger structure in particular circumstances.

Accordingly, FHFA believes that it is justified in interpreting the statutory merger authorization broadly, especially given that, under the terms of the statute and the proposed rule, no business combination may be consummated without the approval of the Director. FHFA therefore requests comment on whether the final rule should set forth a broad or narrow definition for the terms "merge" and "merger," and in particular on reasons for using types of business transactions other than legal mergers for the purpose of achieving combinations of Banks.[10]

Paragraphs (a) through (e) of proposed § 1278.2 summarize the requirements of regulations in this part to which the broad authorization is subject: The Constituent Banks must agree upon the terms of the proposed merger, and the board of directors of each must authorize a written merger agreement; the Constituent Banks must jointly file a merger application with FHFA; the Director of FHFA must grant preliminary approval of the merger; the members of each Constituent Bank must vote to ratify the merger agreement; and the Director must grant final approval of the merger. The details of each of these requirements are set out in §§ 1278.3 through 1278.7 of the proposed rule, respectively, as noted in each of the paragraphs of proposed § 1278.2. In order to clarify the different stages of the process, the proposed rule refers to "authorization" of a merger agreement by the boards of directors of the Constituent Banks, "approval" of the merger by the Director of FHFA and "ratification" of the merger by the members of the Constituent Banks.

Section 1278.3—Merger Agreement:

Section 1278.3 of the proposed rule addresses the terms of the merger agreement that the Constituent Banks to any transaction must execute. It would provide that a merger of Banks under the authority of § 1278.2 shall require a written merger agreement that meets the requirements of paragraphs (a) and (b) of § 1278.3.

Paragraph (a) of § 1278.3 would require that any merger agreement be authorized by the affirmative vote of a simple majority of the board of directors of each Constituent Bank at a meeting on the record and executed by authorized signing officers of each Constituent Bank. Under this provision, a Bank's board of directors would be deemed to have authorized the execution of a merger agreement if a majority of directors present at the meeting, at which a quorum was present, voted in favor of the authorization. The proposed rule would require that the board meet on the record, meaning that the votes and matters discussed must be fully and accurately reflected in an electronic recording, a written transcript, or written minutes of the meeting.

Section 26(b)(1) of the Bank Act requires that the board of directors of each merging Bank approve the merger transaction, but does not address the details of the boards' approval, such as the percentage of votes required or the method of voting. Given the absence of any statutory requirements regarding the details of the board approval, as well as the mandate to establish the conditions and procedures for a merger, FHFA has broad authority to establish an appropriate model for board approval of mergers, including models that might differ from that reflected in the proposed rule.

FHFA has considered several alternatives in developing the proposed rule, and has opted to use the traditional corporate approach for board approval. This approach corresponds with the manner in which board decisions currently are made under the by-laws of all of the Banks. To the extent that a higher standard of deliberation may be desirable for a decision as significant as a merger, FHFA believes that the required ratification by each Banks' members, the required approval of the Director of FHFA, and the other detailed requirements of the proposed rule (all discussed below) provide for sufficient deliberation by the various constituencies. In addition, nothing in the text or legislative history of section 26(b) of the Bank Act evidences any Congressional intent to establish a standard for board approval that is different from that traditionally used by the Banks, or by corporations generally. To the contrary, the addition of the Banks' voluntary merger authority to the Bank Act appears intended to enable and encourage the Banks to develop merger proposals based on their own assessments of their business needs. To require authorization by something more than a simple majority of each board could discourage Bank management and directors from developing and considering merger proposals that could be of benefit to the Bank's members and to the Bank System as a whole. Nevertheless, FHFA requests comment upon whether the standard for approval by the Constituent Banks' boards of directors should differ from that set forth in the proposed rule and, if so, which standard should be made to apply.

Proposed § 1278.3(b) generally would require that a merger agreement set forth all material terms and conditions of the proposed merger and also that it include provisions addressing certain enumerated issues. The enumeration is not intended as a safe harbor regarding whether a merger agreement sets forth all material terms and conditions of the

[9] *See* 19 Am.Jur 2d *Corporations* § 2169 (2010); *Barron's Finance and Investment Handbook* 343 (2d ed. 1987).

[10] As used hereinafter in this preamble, unless otherwise specified, the terms "merge" and "merger" shall encompass all types of business combination transactions.

merger, but is merely a list of issues that must be addressed in all cases.

Thus, paragraph (b)(1) would require the Banks to include in an agreement the proposed Effective Date of the merger, which should be established with sufficient regard for amount of time that it will take to fulfill the requirements of the regulations in this part. FHFA does not intend that an agreement must specify in advance a particular date on which the merger will occur, but does expect that an agreement will include provisions from which the effective date can be reasonably determined, such as within a specified period after the occurrence of a particular event, such as the receipt of final FHFA approval or the satisfaction of all required conditions. In cases where more than two Constituent Banks are a party to a merger agreement that governs two or more component combinations to be consummated at different times, the Banks would be required to include in the agreement the Effective Dates for each component combination.

Paragraph (b)(2) would require the Banks to include in an agreement a description of the main features of the proposed organization certificate and the proposed by-laws for the Continuing Bank. In the case of the proposed organization certificate, the main feature to be addressed would be the listing of states that will make up the district of the Continuing Bank. FHFA recognizes the possibility that certain mergers could involve, as an incident to the initial transaction, the subsequent transfer of states located within the district of one or more of the initial Constituent Banks to the districts of other Banks that are not parties to the initial merger transaction. In such cases the agreement should describe the proposed organization certificate as it would exist immediately after the initial transaction, as well as after any subsequent transactions. Even if those subsequent transactions are not governed by the same merger agreement, they must be described in the merger application filed with FHFA.

Paragraph (b)(3) would require the Banks to include in an agreement a description of the main features of the proposed capital structure plan for the Continuing Bank. Under section 6 of the Bank Act, as implemented by the regulations of the Finance Board, each Bank is required to develop and operate under a capital structure plan that governs the issuance and redemption of, and the rights attached to, the capital stock held by the Bank's members.[11] By statute, all new capital structure plans and modifications to any existing capital structure plan must be approved by FHFA.[12] Consequently, review and approval of the proposed capital structure plan of the Continuing Bank will be a major component of the overall merger approval process. FHFA believes that it is important that the Constituent Banks address the capital structure of the Continuing Bank early in the process and that this should not be left for negotiation after the execution of a merger agreement. Thus, a merger agreement should set forth the main features of the contemplated capital structure plan, including the par value and transferability of the Continuing Bank's capital stock; minimum stock purchase requirements, including both membership and activity-based stock purchase requirements; the various classes of stock and the rights attached to each; and the redemption and repurchase of shares, both from a member and upon termination of or withdrawal from membership.

Paragraph (b)(4) would require the Banks to address in a merger agreement the proposed size and structure of the Continuing Bank's board of directors. New part 1278 refers to the "proposed" board size and structure in recognition of the fact that section 7 of the Bank Act generally requires the Director of FHFA to establish the size and structure of the board of directors of each Bank and gives the Director additional discretion to adjust the board size in connection with any Bank merger.[13] FHFA believes that the Constituent Banks should address this issue at an early stage in the merger process even though the ultimate responsibility for determining the size and composition of the board of the Continuing Bank lies with the Director, acting within the confines of the Bank Act. FHFA requests comments on how best to address the transition from the separate boards of the Constituent Banks to the combined board of the Continuing Bank, and the manner in which it should establish the size and composition of the board for the Continuing Bank, such as immediately on the Effective Date of the merger or gradually through the annual designation of directorships process in the years subsequent to the merger. FHFA also requests comment on how effective corporate governance of a Continuing Bank could be best achieved, whether through increased reliance on board committees or otherwise, if the requirements of section 7 of the Bank Act were to mandate a board size that is significantly larger than those that currently exist.[14]

Paragraphs (b)(5) through (b)(8) of proposed § 1278.3 would require, respectively, that a merger agreement: Set forth the formula to be used to exchange the stock of one or more Constituent Banks for that of the Continuing Bank and prohibit the issuance of fractional shares of Bank stock; set forth any conditions that must be satisfied prior to the Effective Date of the proposed merger; set forth any representations or warranties made by any of the Constituent Banks or their officers, directors or employees; and describe any legal opinions or rulings, whether generated internally, by outside counsel, by FHFA, or another government agency, in connection with the proposed merger. The prohibition on the issuance of fractional shares is consistent with the capital plans of the majority of the Banks, some of which already prohibit fractional shares explicitly, and others of which do so implicitly, either by requiring all stock purchase requirements to be rounded up to the nearest whole number of shares or by requiring that all stock be issued only at its stated par value. The prohibition would not conflict with any Bank's capital plan, as no capital plan expressly authorizes the issuance of fractional shares. The conditions that would be required to be enumerated under paragraph (b)(6) would include, in all cases, ratification of the merger by the members of the Constituent Banks and approval of the merger by the Director of FHFA.

Finally, paragraph (b)(9) would require that a merger agreement contain a provision permitting the board of directors of any Constituent Bank, with the concurrence of the Director of FHFA, to terminate the agreement after the members of the Banks have voted to ratify the agreement in cases where: Information disclosed to members contained material errors or omissions; material misrepresentations were made to members regarding the impact of the proposal; fraudulent activities were used to obtain the members' ratification of the merger; or an event occurred between the time of the member vote and the Effective Date of the merger that would have a significant adverse impact

[11] *See* 12 U.S.C. 1426; 12 CFR part 933. Currently, all but one of the Banks operate under a capital structure plan approved by FHFA pursuant to section 6 of the Bank Act.

[12] *See* 12 U.S.C. 1426(b).

[13] *See* 12 U.S.C. 1427.

[14] All Banks currently have between 14 and 18 directors, with the majority having between 15 and 17 directors.

on the future viability of the Continuing Bank.

Section 1278.4—merger application: Section 1278.4 of the proposed rule would govern the application that the Constituent Banks must file jointly with FHFA to obtain approval for any proposed merger. Although Part 1278 would require an application to include certain specified items, FHFA expects that, even prior to filing a formal application with FHFA, the Constituent Banks will have discussed the possibility of a merger with agency staff on an informal basis to determine whether a merger would present any significant supervisory concerns or involve novel aspects that might require the submission of other categories of information for the Director to appropriately assess the merits of the proposed merger.

Proposed § 1278.4(a) would enumerate the minimum required contents of a merger application. Paragraph (a)(1) would address the written statement that the Constituent Banks would be required to file as the main part of the application. Part 1278 would require that this statement contain: a summary of the material features of the proposed merger; the reasons for the proposed merger; the effect of the proposed merger on the Constituent Banks and their members; the planned Effective Date of the merger; A summary of the material features of any related transactions and the bearing that the consummation of, or failure to consummate, the related transactions is expected to have upon the merger; the names of the persons proposed to serve as directors and senior executive officers of the Continuing Bank; a description of all proposed material operational changes; information demonstrating that the Continuing Bank will comply with all applicable capital requirements after the Effective Date; a statement explaining all officer and director indemnification provisions; and an undertaking that the Constituent Banks will continue to disclose all material information, and update all items, as appropriate. In demonstrating future compliance with applicable capital requirements, the Banks should correlate the data in the pro forma financial statements of the Continuing Bank to the capital calculations required under part 932 of the regulations of the Finance Board.[15]

Paragraph (a)(2) would require an application to include a copy of an executed merger agreement, accompanied by a certified copy of the resolution of the board of directors of each Constituent Bank authorizing the execution of the merger agreement. In addition, paragraphs (a)(3) through (a)(5) would require the Banks to provide, respectively, copies of the proposed organization certificate, the proposed by-laws, and the proposed capital structure plan of the Continuing Bank. Each of those items should have been approved by the board of directors of each of the Constituent Banks prior to submission to FHFA, which will evaluate them and include any necessary approvals as part of the approval of the merger transaction.

Paragraphs (a)(6) and (a)(7) would require the Banks to include as part of the application the most recent audited financial statements for each Bank and pro forma financial statements for the Continuing Bank in such forms as would be required to be included in the Disclosure Statement that the Banks must provide to their members in connection with the member vote under proposed § 1278.6 (discussed in detail below). Depending upon the option chosen by the Constituent Banks, the pro forma financial statements appearing in the Disclosure Statement could include forecasted results for up to twelve (12) months following the date of the most recent balance sheet included in the Disclosure Statement. FHFA is considering whether it should require the Constituent Banks to provide as part of the merger application pro forma forecasted results for as many as three years following the date of the most recent balance sheet in order to better assess the long-term prospects of the Continuing Bank. FHFA requests comment on whether it is advisable to include a different pro forma timeframe for the merger application than that which must be followed in the Disclosure Statement and whether a three-year forecast is appropriate.

Paragraph (b) of proposed § 1278.4 provides that FHFA may require the Constituent Banks to submit any additional information that it determines is required to assess a particular merger. This information may be requested at any time, even after a merger application has been deemed complete under paragraph (c). If FHFA has determined that an application is complete, any subsequent requests for additional information must relate to matters that are derived from or prompted by the information previously submitted, or matters of a material nature that were not reasonably available previously, such as in the case of developments occurring after the determination of completeness or in the case of materials concealed by one of the Banks. Under the proposed rule, FHFA may use a Constituent Bank's failure to provide the required information in a timely manner as grounds to deny a merger application.

Paragraph (c) would govern the timing for determining whether a merger application is complete. Under this provision, FHFA would have thirty (30) days after the receipt of a merger application to determine whether it is complete or whether FHFA needs any additional information for the Director to evaluate the proposed merger. This part would require FHFA to inform the Constituent Banks in writing if the agency determines that an application is complete and that it has all information necessary to evaluate the proposed merger. This part also requires FHFA to inform the Constituent Banks in writing if it determines that an application is incomplete, or that it requires additional information in order to evaluate the application. In that case, FHFA would specify the number of days within which the Constituent Banks must provide any additional information or materials, giving due regard to the nature and extent of the information or materials requested. Part 1278 would require that, within fifteen (15) days of receipt of the additional information or materials, FHFA again determine whether a merger application is complete and so inform the Banks.

Section 1278.5—Preliminary Approval by Director:

With respect to the approval that the Constituent Banks must obtain from the Director of FHFA before a merger may be consummated, the proposed rule contemplates a two-stage process. The first stage would encompass a review of all substantive aspects of a proposed merger, followed by either a preliminary approval or a denial of the merger application. If the Director grants preliminary approval, the second stage would be an abbreviated review after the members of each Constituent Bank have ratified the merger, followed by a final decision. Section 1278.5 of the proposed rule addresses the first stage of the process and includes the standards that the Director would apply in deciding whether to grant or deny preliminary approval and the process for notifying the Constituent Banks of the decision. The proposed rule anticipates that after the Director has granted preliminary approval of a merger, the Constituent Banks will present the terms of the approved merger to their members for ratification. Thus, at the time that the matter is presented to the members they will know that FHFA has granted preliminary approval of the transaction and the nature of any conditions that

[15] 12 CFR part 932.

FHFA has imposed in connection with the preliminary approval. As provided in proposed § 1278.7(b)(2), which is discussed in more detail below, at the second stage the scope of the Director's review would be limited to considering whether: The member vote was carried out in accordance with § 1278.6; all conditions of the preliminary approval have been met; and no material adverse events have occurred.

The standards set forth in the proposed rule which the Director would apply in determining whether to approve a merger of Banks are similar to those used by the federal depository institution regulators in considering mergers and acquisitions of federally insured depository institutions.[16] Proposed § 1278.5(a) provides that the Director must take into consideration the financial and managerial resources of each of the Constituent Banks, the future prospects of the Continuing Bank, and the effect of the proposed merger on the safety and soundness of the Continuing Bank and the Bank System. Each of these would be assessed based upon the materials and information provided as part of the merger application and in response to any subsequent requests for information. In order for the Director to approve a merger, the information and materials submitted must demonstrate that the financial condition of the Continuing Bank will be sound, the management and governance structure of the Continuing Bank will be capable of integrating the operations of the Constituent Banks in a safe and sound manner, that the Continuing Bank will be adequately capitalized subsequent to the merger and that the combination of the Constituent Banks will not present any undue risks to the other Banks. FHFA believes that the "financial and managerial resources and future prospects" standard applied under the federal banking statutes is well understood and provides a body of law and practice that can inform the assessment of potential mergers among Banks.

Proposed § 1278.5(b) addresses procedural aspects of the merger application process and provides that, after FHFA determines that a merger application is complete, the Director shall have thirty (30) days to consider the information and materials provided in the application and either grant or deny preliminary approval of the merger. Certain merger proposals may present novel policy issues, complex financial or accounting analyses, or unprecedented legal issues, any of which may require extended periods of time to resolve. In such cases, the Banks should consult with FHFA about those matters in advance to assure that they may receive an approval within the defined time.

Under paragraph (b)(1), if the Director decides to grant preliminary approval of the merger transaction, FHFA would provide written notice of the approval to each Constituent Bank, as well as to each other Bank and the Office of Finance. The notice provided would include any conditions that FHFA requires to be met prior to the final approval of the merger. In all cases, one of these conditions would be the ratification of the merger by the affirmative vote of the members of each Constituent Bank. The notice provided to the other Banks and to the Office of Finance under this provision would be solely for informational purposes. FHFA believes that the possibility of a merger would be a material development about which the other Banks, which are jointly and severally liable with the Constituent Banks on the System's consolidated obligations,[17] and the Office of Finance, which prepares the combined financial statements for the Bank System, should be informed. The Bank Act does not, and the proposed rule would not, give Banks that are not parties to a merger, or their members, any rights with respect to a contemplated merger, and the inclusion of the notice provision in the proposed rule should not be construed as granting any such right.

Under paragraph (b)(2), if the Director decides to deny preliminary approval of the merger, FHFA would provide similar written notice of the denial to each Constituent Bank, as well as to each other Bank and the Office of Finance. FHFA would include in the written notice to the Constituent Banks a statement of the reasons for the denial. These reasons would be tied to the standards that the Director would be required to apply under proposed § 1278.5(a), or to a Bank's failure to provide information required under this rule. The proposed rule contains no specific provision for reconsideration of a denial of preliminary approval, although nothing therein would prohibit the Constituent Banks from agreeing to an amended merger agreement and re-submitting an application for approval.

Section 1278.6—Ratification by Bank Members:

Section 1278.6 of the proposed rule would set forth the requirements for the ratification of a merger agreement by the Constituent Banks' member institutions. Section 26(b) of the Bank Act explicitly authorizes Banks to merge, provided they obtain the approval of their respective boards of directors and the Director of FHFA, and separately directs FHFA to promulgate regulations to establish the conditions and procedures for consideration and approval of voluntary mergers, which regulations are to include procedures for member approval.[18] Thus, the Bank Act does not make the exercise of the voluntary merger authority explicitly contingent on obtaining the approval of the members, but appears to leave to FHFA the authority to determine whether member approval is required and, if so, to determine the procedures for obtaining member approval. Although the concept of requiring shareholder approval for significant corporate transactions is a well-established principle of general corporate law, the governance structure of the Banks differs in certain key aspects from that of a publicly traded business corporation. For example, each Bank is a cooperative that is owned by its members, which elect their own representatives to the board on a state-wide basis, as well as a minority of independent directors, who are elected from the district at large.[19] Given that the members of a Bank have a more direct representation on the board of directors than do the shareholders of a typical business corporation, FHFA could deem the members' interests to be adequately represented by the individual board members. Notwithstanding that possibility, FHFA believes that the statutory directive to promulgate regulations governing member approval also implies that members would have a direct role in approving a merger, and for that reason has included such a member approval provision in the proposed rule.

Other than requiring FHFA to promulgate regulations addressing the matter of member approval, the Bank Act is silent on what form the Bank member approval process should take. For this reason, FHFA has modeled the proposed voting process for member ratification of a merger after the statutory requirements for member

[16] *See* 12 U.S.C. 1467a(e)(2) (acquisitions of savings associations); 12 U.S.C. 1817(j)(7)(C),(D) (bank change in control); 12 U.S.C. 1828(c)(5) (bank mergers).

[17] The Banks fund their operations principally through the issuance of consolidated obligations, which are debt instruments issued on behalf of the Banks by the Office of Finance, a joint office of the Banks, and under which the Banks are jointly and severally liable for the timely payment of principal and interest when due. *See* 12 CFR 966.2(b), 966.9(a).

[18] *See* 12 U.S.C. 1446(b)(2).

[19] *See* 12 U.S.C. 1427.

voting on the election of Bank directors, which is the only member voting scheme addressed by the Bank Act. Because the statute is silent on the requirements for member approval of mergers, FHFA could mandate voting procedures other than those set forth in the proposed rule. Although FHFA believes that the proposed voting process recognizes the cooperative nature of the Banks' corporate structure and is otherwise sound, FHFA requests comment on what other voting schemes may be appropriate for obtaining member approval of a proposed merger transaction, how those may best be structured, and the rationale for adopting them.

Proposed § 1278.6(a) would govern the member ratification voting process. The introductory portion of paragraph (a) would establish the general requirement that no merger may be consummated unless and until the merger agreement has been ratified by the affirmative vote of the members of each Constituent Bank, carried out in accordance with the requirements of paragraphs (a)(1) through (a)(4).

Paragraph (a)(1) would govern the notice requirements pertaining to the member vote on ratification of the merger. To initiate the voting process, paragraph (a)(1) would require each Constituent Bank to deliver to each of its members a ballot permitting the member to vote for or against the merger, or to abstain. It would require each Bank to deliver with the ballot a Disclosure Statement containing all of the items that would be included in a Form S–4 if the Bank were required under the federal securities laws and SEC regulations to deliver a Form S–4 proxy statement/prospectus to its members in connection with the proposed merger. Because the shares of capital stock issued by each Bank are exempted securities under the 1933 Act, a Bank would not be required to file a Form S–4 registration statement with the SEC, or to deliver a Form S–4 proxy statement/prospectus to its shareholders in connection with a merger, even if the Bank issues stock or holds a shareholder vote as part of the process.[20] Nevertheless, FHFA believes that Bank members should be as fully informed about the details of any proposed merger and the manner in which it would affect their rights and interests as any shareholder of a publicly held corporation. FHFA believes that it is appropriate to model the Disclosure Statement upon the Form S–4 proxy statement/prospectus both because all of the Banks already comply with the periodic reporting regime required under the Securities Exchange Act of 1934 (1934 Act)[21] and because the Form S–4 provides a model for comprehensive shareholder disclosure in a merger transaction that is widely accepted in the business community.

By referencing Part I of the Form S–4 (entitled "Information Required in the Prospectus") the proposed rule would require that the Disclosure Statement include information about: The transaction, including the terms of the transaction, associated risk factors and pro forma financial information; the Constituent Banks, including financial statements and discussion of the Banks' business, which may be supplied in large part through incorporation by reference of the Banks' recent periodic reports filed under the 1934 Act; the voting process; and the proposed management of the Continuing Bank. It is contemplated that, in most cases, the Constituent Banks to a particular transaction would be able to use substantially similar Disclosure Statements and, therefore, that the Banks could prepare the document jointly, with each Bank making any modifications necessary to customize the presentation to its own members. FHFA requests comment on whether a disclosure regime based on the model of the Form S–4 is an appropriate means of ensuring that the members are fully informed about the nature of the proposed merger, or whether some other standard for determining the scope and content of the disclosures would be appropriate.

Paragraph (a)(2) of proposed § 1278.6 would govern the calculation of the number of votes that each member of a Constituent Bank may cast in voting to ratify a merger agreement. The proposed rule provides that each member of each Constituent Bank shall be entitled to cast the same number of votes that the member may cast in that year's election of Bank directors, as set forth in the Bank Act and the implementing regulations.[22] As is required in the case of voting for directors, this part would require each member to cast all of its votes either for or against the ratification of the merger agreement or to abstain with respect to all of its votes.[23] Paragraph (a)(2) would require that each member's vote be made by resolution of its governing body, either authorizing the specific vote or delegating to an individual the authority to vote, as is required in the voting for directors.[24]

By statute, in the election of Bank directors, a member is entitled to cast one vote for each share of Bank stock the member was required to hold as of the record date (December 31 of the previous year), subject to a cap which is equal to the average number of shares of Bank stock required to be held by all members located in the same state. The effect of these provisions is that not all Bank stock carries the right to vote for directors. For example, a Bank member is not entitled to vote stock owned in excess of its minimum stock purchase requirement because it is not "required to be held" by the member under the statute. Similarly, stock held by a member in excess of the statutory cap, *i.e.,* the average required stock holdings for members within its state, is not entitled to be voted in the election of directors. The latter provision reflects a determination by Congress that in a cooperative system a small number of large stockholders should not be able to control the board of directors of a Bank. Lastly, an institution that owns Bank stock, but that is not a member of the Bank, such as an institution that acquired its stock in connection with the acquisition of a Bank member, is not entitled to vote its stock in an election for directors because it is not a member of the cooperative.

FHFA has decided to employ this approach for the proposed rule because it is the only member voting method enshrined in the Bank Act and, therefore, is the only manifestation of general Congressional intent on the subject. In addition, FHFA believes that whatever voting approach is used for

[20] *See* 12 U.S.C. 1426a(c)(1)(A) (Bank Act provision stating that shares of Bank capital stock are exempted securities under the 1933 Act); 15 U.S.C. 77c(a)(2) (1933 Act provision stating that provisions of 1933 Act do not apply to exempted securities, except as otherwise provided therein); 15 U.S.C. 77e (1933 Act provision requiring filing of registration statement and delivery of prospectus in interstate sale of securities, which does not apply to exempted securities).

[21] The Finance Board adopted regulations in 2004 requiring each Bank to register a class of its capital stock (which is issued only to its members) with the SEC under section 12(g) of the 1934 Act, 15 U.S.C. 78*l*(g). *See* 12 CFR part 998; 69 FR 38811 (June 29, 2004). Each Bank subsequently registered a class of its stock with the SEC in compliance with that regulation. Separately, HERA included a provision requiring the Banks to register their stock under section 12(g) of the 1934 Act, and to maintain that registration. *See* 15 U.S.C. 78oo(b). As a result, the Banks are subject to the periodic reporting requirements of section 13(a) of the 1934 Act and must file with the SEC annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K. However, the Banks and their securities are exempted from most other requirements of the federal securities laws, based both on specific no-action relief from the SEC obtained at the time the Banks first registered their stock and subsequent amendments made by HERA to the Bank Act which exempts the Banks from many requirements of the federal securities laws. *See* 12 U.S.C. 1426a.

[22] *See* 12 U.S.C. 1427(b)(1); 12 CFR 1261.6.

[23] *See* 12 CFR 1261.8(d).

[24] *See id.*

approving Bank mergers must be consistent with the cooperative model established by Congress, and thus should not allow for the possibility that a few large stockholders, some of which may not even be members of the cooperative, may control the outcome of a vote on a merger. FHFA requests comment on whether there are alternative voting schemes that may be appropriate in the context of a merger vote, including the legal basis for any alternative and the manner in which such an alternative would reflect the cooperative nature of the Bank System.

Paragraph (a)(3) of proposed § 1278.6 would provide that no Bank may review any ballot until after the closing date established in the Disclosure Statement and may not include in the tabulation any ballot received after the closing date. It would also require that a Constituent Bank tabulate the votes cast in a merger ratification vote immediately after the closing date. Again, these requirements are similar to those that apply to the election of member directors, as provided in § 1261.8(e) of the FHFA's regulations.[25] Paragraph (a)(3) would provide that a proposed merger will be considered to be ratified by a Bank's members if a majority of votes cast in the election have been cast in favor of the ratification of the merger agreement. Finally, paragraph (a)(3) would also require that the Constituent Banks (in the case of a rejected merger proposal), or Continuing Bank (in the case of a ratified merger proposal) retain all ballots for at least two years after the date of the election and would prohibit the Bank from disclosing how any member voted. This requirement is similar to that contained in § 1261.8(f)(5) of FHFA's regulations pertaining to the retention of ballots in the election of Bank directors.[26]

Paragraph (a)(4) would require that, within ten (10) calendar days of the closing date, a Constituent Bank deliver to its members, to each Constituent Bank with which it proposes to merge, and to FHFA a statement of: the total number of eligible votes; the number of members voting in the election; and the total number of votes cast both for and against ratification of the merger agreement, as well as those that were eligible to be cast by members that abstained and by members who failed to return completed ballots.

Paragraph (b) of proposed § 1278.6 would state that, in connection with a proposed merger, no Bank, or any director, officer, or employee thereof, shall make any statement, written or oral, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statement not false or misleading, or necessary to correct any earlier statement that has become false or misleading.

Section 1278.7—Final Approval by Director:

Section 1278.7 of the proposed rule would govern the process by which the Director of FHFA would either grant or deny final approval of merger transactions.

Paragraph (a) of proposed § 1278.7 would provide that, upon ratification of a merger agreement by the members of the Constituent Banks, each Constituent Bank must provide to FHFA: A certified copy of the members' resolution ratifying the merger agreement; a certification of the member vote from the corporate secretary or from an independent third party; and any required evidence that any conditions imposed as part of the preliminary approval granted under § 1278.5 have been satisfied.

Paragraph (b) of proposed § 1278.7 would set forth the procedures for the Director's final determination to grant or deny approval of the merger transaction. The introductory portion would provide that, after FHFA has received all of the materials required to be provided under paragraph (a), the Director shall, within thirty (30) days, either grant or deny final approval of the merger.

Under paragraph (b)(1), if the Director grants final approval of the merger, FHFA would provide written notice of the approval to each Constituent Bank as well as to each Bank and the Office of Finance. The Constituent Banks then would file with FHFA an organization certificate for the Continuing Bank in the form approved by the Director as part of the preliminary approval process and executed by the individuals who will constitute the board of directors of the Continuing Bank. Upon the acceptance of the organization certificate by FHFA, the Continuing Bank would be a body corporate operating under the approved organization certificate, as of the Effective Date, with all powers granted to a Bank under the Bank Act. Paragraph (b)(1) would also provide that, with respect to mergers that meet the definition set forth in paragraph (1) or (2) of the definition of "merger" set forth in § 1278.1, the corporate existence of any Constituent Bank that is not a Continuing Bank would cease as of the Effective Date and the Continuing Bank would succeed to all rights, titles, powers, privileges, books, records, assets and liabilities of the Constituent Banks, as provided in the merger agreement.

Paragraph (b)(2) of proposed § 1278.7 would prohibit the Director of FHFA from denying final approval of a merger except pursuant to a determination that either: the member vote was not carried out in accordance with the requirements of § 1278.6; one or more Constituent Banks failed to fulfill a condition of the preliminary approval; or an event has occurred since the time of the preliminary approval that would have a significant adverse impact on the future viability of the Continuing Bank.

If the Director makes one of the required determinations and denies final approval of a merger, FHFA would be required to provide written notice of the denial to each Constituent Bank and to each other Bank and the Office of Finance. In addition, paragraph (b)(2) would require that FHFA provide to the Constituent Banks a written statement of the reasons for the denial, which reasons must be related to one of the determinations that the Director must make in order to deny final approval.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1278

Banks, banking, Federal home loan banks, mergers.

For the reasons stated in the preamble, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to amend subchapter D of chapter XII of title 12 of the Code of Federal Regulations by adding part 1278 to read as follows:

[25] *See* 12 CFR 1261.8(e).

[26] *See* 12 CFR 1261.8(f)(5).

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY SUBCHAPTER D—FEDERAL HOME LOAN BANKS

PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

Sec.
1278.1 Definitions.
1278.2 Authority.
1278.3 Merger agreement.
1278.4 Merger application.
1278.5 Preliminary approval by Director.
1278.6 Ratification by Bank members.
1278.7 Final approval by Director.

Authority: 12 U.S.C. 1432(a), 1446, and 4511.

§ 1278.1 Definitions.

As used in this part:

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Constituent Bank means a Bank that is proposing to merge with one or more other Banks. Each Bank entering into a merger is a Constituent Bank, regardless of whether it is also a Continuing Bank.

Continuing Bank means a Bank that will exist as the result of a merger of one or more Constituent Banks, and when used in the singular shall include the plural.

Director, written in title case, means the Director of FHFA or his or her designee.

Disclosure Statement means a written document that contains all of the items that a Bank would be required to include in a Form S–4 Registration Statement Under the Securities Act of 1933 (or any successor form promulgated by the United States Securities and Exchange Commission governing disclosure required for securities issued in business combination transactions) when prepared as a prospectus as directed in Part I of the form, if the Banks were required to provide such a prospectus to their shareholders in connection with a merger.

Effective Date means the date on which the Constituent Banks consummate the merger, or, in the case of a merger encompassing two or more component transactions, the date on which the relevant Constituent Banks consummate each component transaction.

FHFA means the Federal Housing Finance Agency.

Merge or *Merger* means—

(1) A merger of one or more Banks into another Bank;

(2) A consolidation of two or more Banks resulting in a new Bank;

(3) A purchase of substantially all of the assets, and assumption of substantially all of the liabilities, of one or more Banks by another Bank or Banks; or

(4) Any other business combination of two or more Banks into one or more resulting Banks.

§ 1278.2 Authority.

Any two or more Banks may merge, provided:

(a) The Constituent Banks have agreed upon the terms of the proposed merger and the board of directors of each Constituent Bank has authorized the execution of a written merger agreement as provided under § 1278.3;

(b) The Constituent Banks have jointly filed a merger application with FHFA to obtain the approval of the Director, as provided under § 1278.4;

(c) The Director has granted preliminary approval of the merger as provided under § 1278.5;

(d) The members of each Constituent Bank have ratified the merger agreement as provided under § 1278.6; and

(e) The Director has granted final approval of the merger as provided under § 1278.7.

§ 1278.3 Merger agreement.

A merger of Banks under the authority of § 1278.2 shall require a written merger agreement that:

(a) Has been authorized by the affirmative vote of a majority of a quorum of the board of directors of each Constituent Bank at a meeting on the record and has been executed by authorized signing officers of each Constituent Bank; and

(b) Sets forth all material terms and conditions of the merger, including, without limitation, provisions addressing each of the following matters—

(1) The proposed Effective Date of the merger;

(2) The proposed organization certificate and by-laws of the Continuing Bank;

(3) The proposed capital structure plan for the Continuing Bank;

(4) The proposed size and structure of the board of directors for the Continuing Bank;

(5) The formula to be used to exchange the stock of the Constituent Banks for the stock of the Continuing Bank, and a provision prohibiting the issuance of fractional shares of stock;

(6) Any conditions that must be satisfied prior to the Effective Date of the proposed merger, which must include ratification by members of the Constituent Banks and approval by the Director;

(7) A statement of the representations or warranties, if any, made or to be made by any Constituent Bank, or its officers, directors, or employees;

(8) A description of the legal opinions or rulings, if any, that have been obtained or furnished by any party in connection with the proposed merger; and

(9) A statement that the board of directors of a Constituent Bank can terminate the merger agreement before the Effective Date upon a determination by the Constituent Bank, with the concurrence of FHFA, that:

(i) The information disclosed to members contained material errors or omissions;

(ii) Material misrepresentations were made to members regarding the impact of the merger;

(iii) Fraudulent activities were used to obtain members' approval; or

(iv) An event occurred between the time of the members' vote and the merger that would have a significant adverse impact on the future viability of the Continuing Bank.

§ 1278.4 Merger application.

(a) *Contents of application.* Any two or more Banks that wish to merge shall submit to FHFA a merger application that describes all material aspects of the proposed merger and that includes, at a minimum, the following:

(1) A written statement that includes—

(i) A summary of the material features of the proposed merger;

(ii) The reasons for the proposed merger;

(iii) The effect of the proposed merger on the Constituent Banks and their members;

(iv) The planned Effective Date of the merger;

(v) if the Constituent Banks contemplate that the proposed merger will be one of two or more related transactions, a summary of the material features of any related transactions and the bearing that the consummation of, or failure to consummate, the related transactions is expected to have upon the merger;

(vi) the names of the persons proposed to serve as directors and senior executive officers of the Continuing Bank;

(vii) A description of all proposed material operational changes including, but not limited to, reductions in the existing staffs of the Constituent Banks, whether and how Bank operations will be combined, and whether any Constituent Bank will continue to operate as a branch of the Continuing Bank;

(viii) Information demonstrating that the Continuing Bank will comply with all applicable capital requirements after the Effective Date;

(ix) A statement explaining all officer and director indemnification provisions; and

(x) An undertaking that the Constituent Banks will continue to disclose all material information, and update all items, as appropriate;

(2)(i) A copy of the executed merger agreement; and

(ii) A certified copy of the resolution of the board of directors of each Constituent Bank authorizing the merger agreement;

(3) A copy of the proposed organization certificate of the Continuing Bank;

(4) A copy of the proposed by-laws of the Continuing Bank;

(5) A copy of the proposed capital structure plan of the Continuing Bank;

(6) The most recent annual audited financial statements for each Constituent Bank; and

(7) Pro forma financial statements for the Continuing Bank in such form as would be required to be included in the Disclosure Statement.

(b) *Additional information.* FHFA may require the Constituent Banks to submit any additional information it deems necessary to evaluate the proposed merger. If FHFA has determined a merger application to be complete as provided in paragraph (c) of this section, FHFA may require the Constituent Banks to submit additional information only with respect to matters derived from or prompted by the materials already submitted, or matters of a material nature that were not reasonably apparent previously, including matters concealed by the Banks or relating to developments that arose after the determination of completeness. If the Constituent Banks fail to provide the additional information in a timely manner, FHFA may deem the failure to provide the required information as grounds to deny the application.

(c) *Completion of application.* Within thirty (30) days of the receipt of a merger application, FHFA shall determine whether the application is complete and whether FHFA has all information necessary for the Director to evaluate the proposed merger.

(1) If FHFA determines that the application is complete and that it has all information necessary to evaluate the proposed merger, it shall so inform the Constituent Banks in writing.

(2) If FHFA determines that the application is incomplete, or that it requires additional information in order to evaluate the application, it shall so inform the Constituent Banks in writing, and shall specify the number of days within which the Constituent Banks must provide any additional information or materials. Within fifteen (15) days of receipt of the additional information or materials, FHFA shall inform the Constituent Banks in writing whether the merger application is complete.

§ 1278.5 Preliminary approval by Director.

(a) *Standards.* In determining whether to approve a merger of any two or more Banks, the Director shall take into consideration the financial and managerial resources of the Constituent Banks, the future prospects of the Continuing Bank, and the effect of the proposed merger on the safety and soundness of the Continuing Bank and the Bank System.

(b) *Determination by Director.* After FHFA determines that a merger application is complete as provided in § 1278.4(c), the Director shall, within thirty (30) days, either grant or deny preliminary approval of the merger.

(1) If the Director grants preliminary approval of the merger, FHFA shall provide written notice of the approval to each Constituent Bank, as well as to each other Bank and the Office of Finance. The notice shall set forth any conditions that must be met prior to the final approval of the merger.

(2) If the Director denies preliminary approval of the merger:

(i) FHFA shall provide written notice of the denial to each Constituent Bank, as well as to each other Bank and the Office of Finance; and

(ii) The notice provided to the Constituent Banks shall include a statement of the reasons for the denial.

§ 1278.6 Ratification by Bank members.

(a) *Requirements for member vote.* No merger of two or more Banks may be consummated unless the merger agreement authorized by the boards of directors of the Constituent Banks has been ratified by the affirmative vote of the members of each Constituent Bank in a voting process that meets the following requirements:

(1) Each Constituent Bank shall submit the authorized merger agreement to its members for ratification by delivering to each of its members—

(i) A ballot that permits the member to vote for or against the ratification of the merger agreement, or to abstain from such vote; and

(ii) A Disclosure Statement that establishes a closing date for the Bank's receipt of completed ballots that is no earlier than thirty (30) days after the date that the ballot and Disclosure Statement are delivered to its members.

(2) In the vote to ratify the merger agreement, each member of each Constituent Bank shall be entitled to cast the same number of votes that the member may cast in that year's election of Bank directors, as set forth in § 1261.6 of this chapter. A member must cast all of its votes either for or against the ratification of the merger agreement, or may abstain with respect to all of its votes. Each member's vote shall be made by resolution of its governing body, either authorizing the specific vote, or delegating to an individual the authority to vote.

(3) No Constituent Bank shall review any ballot until after the closing date established in the Disclosure Statement and shall not include in the tabulation any ballot received after the closing date. A Constituent Bank shall tabulate the votes cast immediately after the closing date. The members of a Constituent Bank shall be considered to have ratified a merger agreement if a majority of votes cast in the election have been cast in favor of the ratification of the merger agreement. The Constituent Bank, or the Continuing Bank, as appropriate, shall retain all ballots received for at least two years after the date of the election, and shall not disclose how any member voted.

(4) Within ten (10) days of the closing date, a Constituent Bank shall deliver to its members, to each Constituent Bank with which it proposes to merge, and to FHFA a statement of—

(i) The total number of eligible votes;

(ii) The number of members voting in the election; and

(iii) The total number of votes cast both for and against ratification of the merger agreement, as well as those that were eligible to be cast by members that abstained and by members who failed to return completed ballots.

(b) *False and misleading statements.* In connection with a proposed merger, no Bank, nor any director, officer, or employee thereof, shall make any statement, written or oral, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statement not false or misleading, or necessary to correct any earlier statement that has become false or misleading.

§ 1278.7 Final approval by Director.

(a) *Proof of member ratification.* Upon ratification of a merger agreement by the members of the Constituent Banks, the

Constituent Banks shall provide to FHFA:

(1) A certified copy of the members' resolution ratifying the merger agreement, on which the members cast their votes, from each Constituent Bank;

(2) A certification of the member vote from the corporate secretary of each Constituent Bank or from an independent third party;

(3) Any required evidence that any conditions imposed as part of the preliminary approval granted under § 1278.5 have been satisfied; and

(4) The Disclosure Statement for each Constituent Bank.

(b) *Final determination.* After FHFA has received all materials required to be provided under paragraph (a) of this section, the Director shall, within thirty (30) days, either grant or deny final approval of the merger.

(1) If the Director grants final approval of the merger:

(i) FHFA shall provide written notice of the approval to each Constituent Bank, as well as to each other Bank and the Office of Finance;

(ii) The Constituent Banks shall file with FHFA an organization certificate for the Continuing Bank, executed by the individuals who will constitute the board of directors of the Continuing Bank. Upon the acceptance of the organization certificate by FHFA, the Continuing Bank shall be a body corporate operating under the approved organization certificate, as of the Effective Date, with all powers granted to a Bank under the Bank Act; and

(iii) With respect to mergers that meet the definition set forth in paragraph (1) or (2) of the definition of "merger" in § 1278.1, the corporate existence of any Constituent Bank that is not a Continuing Bank shall cease as of the Effective Date and the Continuing Bank shall succeed to all rights, titles, powers, privileges, books, records, assets and liabilities of the Constituent Banks, as provided in the merger agreement.

(2)(i) If preliminary approval has been granted, the Director shall not deny final approval of a merger other than pursuant to a determination that—

(A) The member vote was not carried out in accordance with the requirements of § 1278.6;

(B) One or more Constituent Banks failed to fulfill a condition of the preliminary approval; or

(C) An event has occurred since the time of the preliminary approval that would have a significant adverse impact on the future viability of the Continuing Bank.

(ii) If the Director denies final approval of a merger:

(A) FHFA shall provide written notice of the denial to each Constituent Bank, as well as to each other Bank and the Office of Finance; and

(B) The notice provided to the Constituent Banks shall include a statement of the reasons for the denial.

Dated: November 19, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–29739 Filed 11–24–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

[Docket ID: BOEM–2010–0033]

RIN 1010–AD53

Production Measurement Documents Incorporated by Reference

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Proposed rule.

SUMMARY: BOEMRE proposes to incorporate by reference 15 new production measurement industry standards into the regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf. Incorporation of the production measurement standards provides industry with up-to-date guidance for measuring oil and gas production volumes. This will result in more efficient measurement of oil and gas production.

DATES: Submit comments by January 25, 2011. BOEMRE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD53 as an identifier in your message. *See also* Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID BOEM–2010–0033 then click search. Under the tab "View By Docket Folder" you can submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Production Measurement Documents Incorporated by Reference, 1010–AD53" in your comments and include your name and return address.

Availability of Incorporated Documents for Public Viewing

When a copyrighted technical industry standard is incorporated by reference into our regulations, BOEMRE is obligated to observe and protect that copyright. BOEMRE provides members of the public with Web site addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. The decision to charge a fee is decided by standard developing organizations. The American Petroleum Institute (API) will provide free online public access to 160 key industry standards, including a broad range of technical standards once changes to the API Web site are complete. The standards represent almost one-third of all API standards and will include all that are safety-related or have been incorporated into Federal regulations, including the standards in this rule. The newly accessible standards will be available for review, and hardcopies and printable versions will continue to be available for purchase. We are proposing to incorporate both API and American Gas Association (AGA) standards, and the addresses to these Web site locations are:

API Standard/Document Contact IHS at 1–800–854–7179 or 303–397–7956 Local and International, *http://www.global.ihs.com* and; AGA Standard/Document 1–800–699–9277—Toll free in US & Canada *http://www.techstreet.com/contact.tmpl.*

For the convenience of the viewing public who may not wish to purchase or view these proposed documents online, they may be inspected at the Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Room 3313, Herndon, Virginia 20170; phone: 703–787–1587; 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/code_of_federal_regulations/ibr_locations.html.*

These documents, if incorporated in the final rule, will continue to be made available to the public for viewing when requested. Specific information on where these documents can be inspected or purchased can be found at

30 CFR 250.198, Documents Incorporated by Reference.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Regulations and Standards Branch, at (703) 787–1587.

SUPPLEMENTARY INFORMATION: BOEMRE uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities in the Outer Continental Shelf (OCS). This practice, known as incorporation by reference, allows BOEMRE to incorporate the requirements of technical documents into the regulations at 30 CFR 250.198 without increasing the volume of the Code of Federal Regulations (CFR). BOEMRE currently incorporates by reference the requirements found in 97 documents into the offshore operating regulations.

The regulations found at 1 CFR part 51 govern how BOEMRE and other Federal agencies incorporate the requirements found in various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the edition of the document or publication cited in the regulations. This means that newer editions, amendments, or revisions to documents already incorporated by reference in regulations are not part of BOEMRE regulations.

In some cases, BOEMRE may not agree with a standard or a specific section in a standard. As a result, a standard may not be included in the regulations at all or only a portion may be included. This review process is conducted by BOEMRE's Subject Matter Experts and Independent Reviewers as necessary. Standards that are considered for incorporation are subject to a side-by-side comparison of similar standards also under consideration for proposed incorporation into BOEMRE's regulations. Once this process is complete, we make a final determination whether incorporating a standard(s) will fully address our regulatory concerns. This is accomplished by a final review of the proposed standard and the regulation that it would be incorporated into. Based on this review criteria, BOEMRE then makes a final determination either to accept or reject the standard(s) proposed for incorporation.

BOEMRE is proposing to incorporate the requirements found in 15 measurement documents (*i.e.,* 12 American Petroleum Institute (API) and 3 American Gas Association (AGA) documents) to add the most current and updated measurement standards to provide industry with up-to-date guidance for measurement technology. The incorporation of these new standards will ensure that lessees use the best available and most accurate technologies while operating in the OCS.

Measurement documents were chosen for incorporation into the regulations based on the latest technological advances introduced in these standards and highlighted in the synopsis below. BOEMRE, in cooperation with independent reviewers from industry and academia, reviews and comments on the contents of these documents. Additionally, since this is a proposed rulemaking, public comments that we receive from the regulated industry are considered an unbiased and independent review and may be included in the final rule.

BOEMRE constantly participates in the reviews, revisions, and updates of standards to determine if new versions should be incorporated into our regulations. This may be necessary because of changes in technology, environmental concerns, or incidents or trend in incidents. Also, we may request that a standard writing body develop a new standard based on incident analysis or due to the introduction of new technologies, such as deepwater operations and floating production systems.

BOEMRE has reviewed the following requirements in these listed documents and proposes they be incorporated into the regulations at 30 CFR Part 250 to ensure that industry uses the best available and most accurate measurement technologies. BOEMRE review shows that the decision to use these standards will not impose additional costs on the offshore oil and gas industry.

A summary of BOEMRE's review of the documents is provided below:

• *AGA Report No. 7—Measurement of Natural Gas by Turbine Meters; Revised February 2006:*

This standard applies to the installation, calibration, and operation of axial-flow turbine flow meters for measurement of natural gas, typically 2-inch and larger bore diameter, in which the entire gas stream flows through the meter rotor. Typical applications include measuring single-phase gas flow found in production, process, transmission, storage, and distribution and end-use gas measurement systems.

• *AGA Report No. 9—Measurement of Gas by Multipath Ultrasonic Meters; Second Edition, April 2007:*

This standard describes the optimum conditions and best practices for multipath ultrasonic transit-time flow meters used for the measurement of natural gas. Multipath ultrasonic meters have at least two independent pairs of measuring transducers (acoustic paths). Typical applications include measuring the flow of gas through production facilities, transmission pipelines, storage facilities, distribution systems, and large end-use customer meter sets. BOEMRE currently requires multipath ultrasonic meters used for gas royalty or allocation measurement to contain at least three independent pairs of measuring transducers.

• *AGA Report No. 10—Speed of Sound in Natural Gas and Other Related Hydrocarbon Gases; January 2003:*

This standard contains information for computation of speed of sound in natural gas and other related hydrocarbon gases. Procedures are included for computation of several related gas properties, including heat capacity, enthalpy, and the critical flow coefficient for sonic nozzles.

At the request of API, Standard 2551, Measurement and Calibration of Horizontal Tanks, First Edition, 1965; reaffirmed March 2002, has been withdrawn and divided into two separate standards as discussed below:

• *API MPMS Chapter 2.2E—Calibration of Horizontal Cylindrical Tanks —Part 1: Manual Methods, First Edition, April 2004:*

This standard specifies manual methods for the calibration of nominally horizontal cylindrical tanks, installed at a fixed location. It is applicable to horizontal tanks up to 4 meters in diameter and 30 meters in length. The methods are applicable to insulated and non-insulated tanks, either when they are above ground or underground. The methods are applicable to pressurized tanks, and to both knuckle-dish-end and flat-end cylindrical tanks as well as elliptical and spherical head tanks. Information is also provided to address tanks over and above these dimensions.

• *API MPMS Chapter 2.2F—Calibration of Horizontal Cylindrical Tanks —Part 2: Internal Electro-optical Distance-Ranging Method, First Edition, April 2004:*

This standard specifies a method for the calibration of horizontal cylindrical tanks having diameters greater than 2 meters by means of internal measurements using an electro-optical distance-ranging instrument, and for the subsequent compilation of tank-capacity

tables. This method is known as the internal electro-optical distance-ranging (EODR) method.

• *API MPMS Chapter 4—Proving Systems, Section 8—Operation of Proving Systems; First Edition, November 1995; Reaffirmed March 2007:*

This standard provides information on operating meter provers in single-phase liquid hydrocarbons, though much of the information provided is applicable to other fluids. It is intended for use as a reference manual for operating proving systems.

• *API MPMS Chapter 5—Metering, Section 6—Measurement of Liquid Hydrocarbons by Coriolis Meters; First Edition, October 2002; Reaffirmed March 2008:*

This standard is applicable to custody transfer applications for liquid hydrocarbons. Topics covered are:

• Applicable API standards used in the operation of Coriolis meters,

• Proving and verification using both mass- and volume-based meters, and

• Installation, operation, and maintenance.

The mass- and volume-based calculation procedures for proving and quantity determination are included in this document. Additionally the Coriolis meter is capable of simultaneously determining density; however, this document does not address its use as a stand-alone densitometer.

• *API MPMS Chapter 5—Metering, Section 8—Measurement of Liquid Hydrocarbons by Ultrasonic Flow Meters Using Transit Time Technology; First Edition, February 2005:*

This standard defines the application criteria for Ultrasonic Flow Meters (UFMs) and addresses the appropriate considerations regarding the liquids to be measured. Also, this document addresses the installation, operation, and maintenance of UFMs in liquid hydrocarbon service. This standard only pertains to spool type, two or more path ultrasonic flow meters with permanently affixed transducer assemblies. While this document was specifically written for custody transfer measurement, other acceptable applications may include allocation measurement, check meter measurement, and leak detection measurement.

• *API MPMS Chapter 11—Physical Properties Data, Section 1—Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils; May 2004; Addendum 1, September 2007:*

This standard provides the algorithm and implementation procedure for the correction of temperature and pressure effects on density and volume of liquid hydrocarbons which fall within the categories of crude oil, refined products, or lubricating oils. Natural gas liquids and liquid petroleum gases are excluded from consideration in this standard. The combination of density and volume correction factors for both temperature and pressure is collectively referred to in this standard as a Correction for Temperature and Pressure of a Liquid. The temperature portion of this correction is termed the Correction for the effect of Temperature on Liquid, also historically known as Volume Correction Factor. The pressure portion is termed the Correction for the effect of Pressure on Liquid.

• *API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 3—Proving Reports; First Edition, October 1998; Reaffirmed 2009:*

This standard provides standardized calculation methods for the determination of meter factors under defined conditions, regardless of the point of origin or destination or units of measure required by governmental customs or statute. The criteria contained here will allow different entities using various computer languages on different computer hardware (or by manual calculations) to arrive at identical results using the same standardized input data. This document also specifies the equations for computing correction factors, including the calculation sequence, discrimination levels, and rules for rounding to be employed in the calculations. No deviations from these specified equations are permitted, since the intent of this document is to establish a rigorous standard.

• *API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 4—Calculation of Base Prover Volumes by the Waterdraw Method; First Edition, December 1997; Reaffirmed 2009:*

This standard provides standardized calculation methods for the quantification of liquids and the determination of base prover volumes under defined conditions, regardless of the point of origin or destination or units of measure required by governmental organizations. The criteria contained in this document allows different individuals, using various computer languages on different computer hardware (or manual calculations), to arrive at identical results using the same standardized input data. Part 4 of this standard discusses the calculation procedures for the waterdraw calibration method. It is important to point out that this publication rigorously specifies the equations for computing correction factors, rules for rounding, the sequence of the calculations, and discriminations levels of all numbers to be used in these calculations. No deviations from these specifications are permitted since the intent of this document is to serve as a rigorous standard.

• *API MPMS Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 5—Calculation of Base Prover Volume by Master Meter Method; First Edition, September 2001; Reaffirmed October 2006:*

This standard provides standardized calculation methods for the quantification of liquids and the determination of base prover volumes under defined conditions, regardless of the point of origin or destination or units of measure required by governmental customs or statute. The criteria contained in this document allow different entities using various computer languages on different computer hardware (or manual calculations) to arrive at identical results using the same standardized input data. Part 5 of this standard discusses the calculation procedures required to determine the base prover volume by the master meter method. This document also specifies the equations for computing correction factors, rules for rounding, including the calculational sequence, and discrimination levels to be employed in the calculations. No deviations from these specified equations are permitted, since the intent of this document is to establish a rigorous standard.

• *API MPMS, Chapter 21—Flow Measurement Using Electronic Metering Systems, Section 2—Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters; First Edition, June 1998:*

This standard provides guidance for effective utilization of electronic liquid measurement systems for custody transfer measurement of liquid hydrocarbons. The guidance applies to systems using turbine or positive displacement meters. The procedures and techniques discussed in the document are recommended for use with new measurement applications. Liquid measurement using existing equipment and techniques not in compliance with this standard may have

a higher uncertainty than liquid measurement based on the recommendations contained in this document.

• *API MPMS Chapter 21—Flow Measurement Using Electronic Metering Systems, Addendum to Section 2—Flow Measurement Using Electronic Metering Systems, Inferred Mass; First Edition, August 2000; Reaffirmed February 2006:*

This standard specifically covers inferred mass measurement systems utilizing flow computers as the tertiary flow calculation device and either turbine or displacement type meters, working with on-line density meters, as the primary measurement devices. The procedures and techniques discussed in this document are required for use with new measurement applications. Liquid measurement using existing equipment and techniques, not in compliance with this standard, may have a higher uncertainty than liquid measurement based on the recommendations contained in this document.

• *API RP 86, Recommended Practice for Measurement of Multiphase Flow; First Edition, September 2005:*

This recommended practice addresses how the user measures (multiphase) flow rates of oil, gas, water, and any other fluids that are present in the effluent stream of a single well. This requires the definition not only of the methodology that is to be employed, but also the provision of evidence that this methodology will produce a quality measurement in the intended environment. It is intended that this recommended practice be used in conjunction with other similar documents to guide the user toward good measurement practice in upstream hydrocarbon production applications. The term upstream refers to those measurement points prior to, but not including, the custody transfer point.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The primary purpose of this proposed rule is to add the most current and updated measurement standards so that lessees may use new measurement technology. BOEMRE believes that these new standards will provide guidance to lessees and operators and would not result in any additional costs.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because it does not harm other agencies, nor does it hinder other agencies from taking action.

(3) This proposed rule would not materially alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The benefits of the proposed changes in this rule justify the negligible cost incurred by the offshore oil and gas industry. The minor cost to the industry in most cases would be minor equipment modification or replacement, some additional training and the purchase price of the new document. Additionally, these benefits would add the most current and updated measurement standards to provide industry with up-to-date guidance for measurement technology. Requiring compliance with the standards in the new editions of these documents incorporated by reference would assure the use of the best available and most accurate measurement technologies for operations on the OCS.

(4) This proposed rule would raise novel, legal, or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rule would affect lessees and operators of oil and gas leases in the OCS. This includes approximately 130 active Federal oil and gas lessees. Lessees that conduct business under this rule are coded under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is defined as one with fewer than 500 employees. BOEMRE estimates that approximately 70 percent of the 130 lessees and operators that explore for and produce oil and gas on the OCS meet the definition of a small company. This rule, which proposes to incorporate 15 new standards, would not have a significant economic effect on a substantial number of small companies because the newly incorporated standards would not impose significant costs or burdens on any lessees or operators. Therefore, the primary economic effect of this rule on small business would be the nominal cost associated with the purchase of the standards.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The main purpose of this rule would be to add industry standards to provide industry with up-to-date guidance in the use of new measurement technology.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the rule would be the same as current requirements.

c. Would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements would apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

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

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on Federally recognized Indian Tribes. There are no Indian or Tribal lands in the OCS nor Tribally owned businesses subject to the regulation.

Paperwork Reduction Act

The proposed revisions do not contain any information collection and do not require a submission to the Office of Management and Budget for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it falls within BOEMRE categorical exclusion covering the "Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators. Guidelines and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal" are categorically excluded under 516 Departmental Manual 15.4(C)(1). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

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

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

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Part 250

Continental shelf, Incorporation by reference, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: November 18, 2010.

Ned Farquhar,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, BOEMRE proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend § 250.198 by:

a. Removing paragraph (h)(75) and redesignating paragraphs (h)(76) through (h)(80) as (h)(75) through (h)(79) respectively;

b. Adding new paragraphs (h)(80) through (h)(91); and

c. Adding new paragraph (l) to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(h) * * *

(80) API MPMS Chapter 2.2E—Calibration of Horizontal Cylindrical Tanks—Part 1: Manual Methods, First Edition, April 2004, Order No. HX202E01; incorporated by reference at § 250.1202(l)(4);

(81) API MPMS Chapter 2.2F—Calibration of Horizontal Cylindrical Tanks—Part 2: Internal Electro-optical Distance-Ranging Method, First Edition, April 2004, Order No. HH202F01; incorporated by reference at § 250.1202(l)(4);

(82) API MPMS, Chapter 4—Proving Systems, Section 8—Operation of Proving Systems; First Edition, November 1995; reaffirmed March 2007, Order No. H04081; incorporated by reference at § 250.1202(a)(3), (f)(1);

(83) API MPMS, Chapter 5—Metering, Section 6—Measurement of Liquid Hydrocarbons by Coriolis Meters; First Edition, October 2002; reaffirmed March 2008, Order No. H05061; incorporated by reference at § 250.1202(a)(3);

(84) API MPMS, Chapter 5—Metering, Section 8—Measurement of Liquid Hydrocarbons by Ultrasonic Flow Meters Using Transit Time Technology; First Edition, February 2005; Product No. H050801; incorporated by reference at § 250.1202(a)(3);

(85) API MPMS Chapter 11—Physical Properties Data, Section 1—Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils; May 2004, Addendum 1 September 2007, Product No. H11013; incorporated by reference at § 250.1202(a)(3), (g);

(86) API MPMS, Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 3—Proving Reports; First Edition, October 1998; reaffirmed 2009, Product No. H12023; incorporated by reference at § 250.1202(a)(3), (g);

(87) API MPMS, Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 4—Calculation of Base Prover Volumes by the Waterdraw Method, First Edition, December 1997; reaffirmed 2009, Order No. H12042; incorporated by reference at § 250.1202(a)(3), (g);

(88) API MPMS, Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Part 5—Calculation of Base Prover Volume by Master Meter Method; First Edition, September 2001; reaffirmed October 2006, Product No. H12025; incorporated by reference at § 250.1202(a)(3), (g);

(89) API MPMS, Chapter 21—Flow Measurement Using Electronic Metering Systems, Section 2—Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters; First Edition, June 1998; Order No H21021; incorporated by reference at § 250.1202(a)(3);

(90) API MPMS, Chapter 21—Flow Measurement Using Electronic Metering Systems, Addendum to Section 2—Flow Measurement Using Electronic Metering Systems, Inferred Mass; First Edition, August 2000; reaffirmed February 2006; Order No. H2102A; incorporated by reference at § 250.1203(b)(4);

(91) API RP 86, Recommended Practice for Measurement of Multiphase Flow; First Edition, September 2005; Product No. G08601; incorporated by reference at § 250.1201, § 250.1202 (a)(3), and § 250.1203(a)(2).

* * * * *

(l) American Gas Association (AGA Reports), 400 North Capitol Street, NW., Suite 450, Washington, DC 20001, *http://www.aga.org*; phone: (202) 824–7000;

(1) AGA Report No. 7—Measurement of Natural Gas by Turbine Meters; Revised February 2006; AGA Catalog No. XQ0601; incorporated by reference at § 250.1203(a)(2);

(2) AGA Report No. 9—Measurement of Gas by Multipath Ultrasonic Meters; Second Edition, April 2007; AGA Catalog No. XQ0701; incorporated by reference at § 250.1203(a)(2);

(3) AGA Report No. 10—Speed of Sound in Natural Gas and Other Related Hydrocarbon Gases; May 2003; AGA Catalog No. XQ0310; incorporated by reference at § 250.1203(a)(2).

[FR Doc. 2010–29645 Filed 11–24–10; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2009–OS–0039]

RIN 0790–AI55

32 CFR Part 183

Defense Support to Special Events

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes procedures and assigns responsibilities for Special Events, sets forth procedural guidance for the execution of Special Events support when requested by civil authorities or qualifying entities and approved by the appropriate DoD authority, or as directed by the President, within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States or any political subdivision thereof and elsewhere if properly approved.

DATES: Comments must be received by January 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Corbin, 703–693–8392.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 183 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Pub. L. 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 183 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 183 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and assigns responsibilities within DoD for Special Events in support of civil and non-governmental entities; therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 183 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 183 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 183

Armed forces, Special events.

Accordingly, 32 CFR part 183 is proposed to be added to read as follows:

PART 183—DEFENSE SUPPORT OF SPECIAL EVENTS

Sec.
183.1 Purpose.
183.2 Applicability and scope.
183.3 Definitions.
183.4 Policy.
183.5 Responsibilities.
183.6 Procedures.

Authority: 2 U.S.C. 1966, 2 U.S.C. 1970, 10 U.S.C. 372–374, 10 U.S.C. 377, 10 U.S.C. 2012, 10 U.S.C. 2553–2555, 10 U.S.C. 2564, 18 U.S.C. 3056, 31 U.S.C. 1535–1536, 32 U.S.C. 502, 32 U.S.C. 508, Public Law 94–524, and Section 5802 of Public Law 104–208, as amended.

§ 183.1 Purpose.

This part:

(a) Establishes DoD policy, assigns responsibilities, and provides procedures for support of civil authorities and qualifying entities during the conduct of special events. This support will be referred to as "support to special events."

(b) Implements provisions of DoD Directive 5111.1 (see *http://www.dtic.mil/whs/directives/corres/pdf/511101p.pdf*); Deputy Secretary of Defense Memorandum, "Delegations of Authority," November 30, 2006 (see *http://www.dtic.mil/whs/directives/corres/dir3.html*); title 2, United States Code (U.S.C.) 1966; title 2 U.S.C. 1970; title 10 U.S.C. 372–374; title 10 U.S.C. 377; title 10 U.S.C. 2012; title 10 U.S.C. 2553–2555; title 10 U.S.C. 2564; title 18 U.S.C. 1385; title 18 U.S.C. 3056; title 31 U.S.C. 1535–1536; title 32 U.S.C. 502; title 32 U.S.C. 508; Public Law 94–524; Section 5802 of Public Law 104–208, as amended; and title 32, Code of Federal Regulations (CFR) part 185 addressing matters pertaining to Defense Support of Civil Authorities (DSCA) for special events and qualifying entities.

§ 183.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

§ 183.3 Definitions.

These terms and definitions are for the purpose of this part only.

Civil authorities. Defined in Joint Publication 1–02 (*see http://www.dtic.mil/doctrine/dod_dictionary/*).

Integrated Federal Support Overview (IFSO). A collaborative effort of the Special Events Working Group. The purpose of the Integrated Federal Support Overview is to inform the Secretary of Homeland Security and other appropriate senior Federal officials, including the Federal coordinator for the special event, of all the Federal activities and support in preparation for and execution of a special event. The IFSO facilitates the Federal coordinator's ability to lead a unified coordination group initially in case of an incident to support the Secretary of Homeland Security's incident management responsibilities. It also educates Federal interagency partners on Federal resources committed to the special event.

National special security event (NSSE). By definition, an NSSE is an Incident of National Significance as defined by the National Response Plan. These national or international events, occurrences, contests, activities, or meetings, which, by virtue of their profile or status, represent a significant target for deliberate attack; or, they can be the result of natural disasters or other emergency conditions, and therefore warrant additional preparation, planning, and mitigation efforts. The U.S. Secret Service (USSS), Federal Bureau of Investigation (FBI), and Federal Emergency Management Agency (FEMA) serve as the Federal agencies with lead responsibilities for NSSEs; other Federal agencies, including the Department of Defense, may provide support to the NSSE if authorized by law.

NSSE Executive Steering Committee. This group is established when the Secretary, DHS designates a specific event to be a NSSE. The group, led by the USSS, is comprised of Federal, state and local public safety and security officials, whose primary responsibility is to coordinate and develop a specific security plan for the designated NSSE.

Qualifying entity. A non-Governmental organization to which the Department of Defense may provide assistance by virtue of statute, regulation, policy, or other approval by the Secretary of Defense or his or her authorized designee.

Special event. An international or domestic event, contest, activity, or meeting, which by its very nature, or by specific statutory or regulatory authority, may warrant security, safety, and/or other logistical support or assistance from the Department of Defense. Event status is not determined by DoD and support may be requested by either civil authorities or non governmental entities. Support provided may be reimbursable.

Special event working group. A single forum designed to ensure comprehensive and coordinated Federal interagency awareness of, and appropriate support to, special events. The Special Event Working Group is co-chaired by representatives from the Department of Homeland Secuirty (DHS) (including the USSS and FEMA) and the FBI, and comprises representatives from over 40 Federal departments and agencies, including the Departments of Defense, Homeland Security, Justice, State, Energy, Labor, Health & Human Services, and Commerce and from the Office of the Director of National Intelligence and the Environmental Protection Agency. The Department of Defense representative on the Special Event Working Group is designated by the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)). The Special Event Working Group develops the Special Events Awareness Report on an annual basis.

§ 183.4 Policy.

It is DoD policy that:

(a) Support to special events is a subset of DSCA.

(b) DoD capabilities may be used to provide support for international and domestic special events as authorized by law or DoD policy. DoD resources in support of special events may be provided only after the resources of all other relevant governmental and non-governmental entities are determined not to be available, unless there is a statutory exception or DoD is the only source of specialized capabilities. DoD support should not be provided if use of commercial enterprises would be more appropriate.

(c) The Department may support such events with personnel, equipment, and services in accordance with applicable laws, regulations, and interagency

agreements. Most support shall be provided on a non-interference basis with careful consideration given to effects on readiness and current operations.

(d) DoD security and safety-related support for an event shall have priority over logistics assistance; however, logistics assistance may be provided if deemed appropriate and necessary, consistent with authorizing statutes and applicable policy guidance.

(e) Funding for special events is subject to the following:

(1) DoD may receive separate funding or authority to provide support to specific special events.

(2) Support to special events for which the Department of Defense does not receive appropriations or for which DoD funds are not available for such support must be approved by the Secretary of Defense and must be provided on a reimbursable basis in accordance with title 10 U.S.C. 372–374; title 10 U.S.C. 377; title 10 U.S.C. 2012; title 10 U.S.C. 2553–2555; title 10 U.S.C. 2564; or title 31 U.S.C. 1535–1536, or other applicable statutes.

(3) Reimbursement for DoD support provided to civilian law enforcement agencies during special events is required, in accordance with title 10 U.S.C. 377, unless the Secretary of Defense elects to waive reimbursement after determining that the support:

(i) Is provided in the normal course of military training or operations, or

(ii) Results in a benefit to the personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(4) Security and safety of special events are responsibilities shared by Federal, State, and local authorities. If Federal funds will be provided to State or local authorities to offset the costs of enhanced security and public safety for special events and if State or local officials request the employment of National Guard personnel in a Federal pay status, States shall be encouraged to use those funds to employ those National Guard personnel in a State pay status or to reimburse the Department of Defense for costs related to the employment of the National Guard personnel in a Federal pay status.

(f) DoD Components shall provide support to civil authorities or qualifying entities for special events only as authorized in this part. This does not apply to installation commanders or heads of DoD Components providing localized support to a special event under the auspices of community relations, public outreach, or recruitment efforts pursuant to DoD Directive 5410.18 (see *http://www.dtic.mil/whs/directives/corres/pdf/541018p.pdf*) and DoD Instruction 5410.19 (see *http://www.dtic.mil/whs/directives/corres/pdf/541019p.pdf*) or other similar authority.

(g) DoD support to special events that includes support to civilian law enforcement officials must comply with DoD Directive 5525.5 (*see http://www.dtic.mil/whs/directives/corres/pdf/552505p.pdf*).

§ 183.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish policy for and facilitate the interagency coordination of special events with Federal, State, and local agencies; and qualifying entities and the DoD Components, as required.

(b) The ASD(HD&ASA), under the authority, direction, and control of the USD(P), shall:

(1) In coordination with the Chairman of the Joint Chiefs of Staff (CJCS), oversee the management and coordination of DoD support to special events including, without limitation, events covered under Title 10 U.S.C. 2564.

(2) Serve as the principal civilian advisor to the Secretary of Defense and the USD(P) on DoD support to special events.

(3) In accordance with DoD Directive 5111.13 (*see http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf*), approve requests for assistance from civil authorities and qualifying entities for DoD support to special events. Such requests shall be coordinated with appropriate offices in the OSD, the CJCS, and the heads of appropriate DoD Components. The ASD(HD&ASA) will immediately notify the Secretary of Defense when this authority is exercised.

(4) Coordinate, or consult on, special event support policy with other Federal departments and agencies, as appropriate.

(5) Develop, coordinate, and oversee the implementation of DoD support to special events for the Department of Defense.

(6) Through the CJCS, monitor the activation, deployment, and employment of DoD personnel, facilities, and other resources involved in DoD support to special events.

(7) Coordinate DoD support to special events with the General Counsel of the Department of Defense (GC, DoD) and the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO).

(8) Ensure information relating to all aspects of special events receives the broadest possible dissemination using all approved media as appropriate and in coordination with the Assistant Secretary of Defense for Public Affairs (ASD(PA)).

(9) Represent DoD regarding special events to other Federal departments and agencies, State and local authorities, and qualifying entities, including designating the DoD representatives for the working groups identified in § 183.6(b) of this part.

(10) Manage, in conjunction with the USD(C)/CFO, the Support for International Sporting Competitions (SISC) Defense Account.

(11) In accordance with section 5802 of Public Law 104–208, as amended, submit notification to the congressional defense committees of the Department's plans to obligate funds in the SISC Defense Account.

(12) In accordance with title 10 U.S.C. 2564 submit an annual report to Congress, no later than January 30 of each year following a year in which the Secretary of Defense provides assistance under title 10 U.S.C. 2564, detailing DoD support to certain sporting competitions.

(c) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall coordinate on DoD support to special events and, in coordination with the CJCS, provide advice regarding the effect the requested support will have on readiness and military operations.

(d) The USD(C)/CFO shall:

(1) Coordinate on DoD support to special events and provide advice regarding the effect on the DoD budget and financial resources.

(2) Maintain the SISC account in conjunction with the ASD(HD&ASA).

(e) The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall coordinate on DoD support to special events that includes logistical support.

(f) The GC, DoD shall coordinate and provide legal counsel on DoD support to special events.

(g) The ASD(PA) shall provide policy guidance and review, coordinate, and approve requests for ceremonial and entertainment support for special events in accordance with DoD Directives 5122.05 (*see http://www.dtic.mil/whs/directives/corres/pdf/512205p.pdf*) and 5410.18 and DoD Instruction 5410.19.

(h) The Executive Secretary of the Department of Defense shall:

(1) Act as the initial point of contact for the Department of Defense pertaining to requests addressed to the Secretary of Defense, Deputy Secretary of Defense, or the Executive Secretary for DoD support for special events.

(2) Upon receipt of such a request for DoD support to a special event, determine who within the Department has the lead action on the Request for Assistance (RFA). Determine if the RFA is for a single capability for which a DoD Component is the office of primary responsibility (OPR) or serves as a DoD Executive Agent; and if so, forward the request to that DoD Component for action and notify ASD(HD&ASA) and the CJCS. All RFAs will be distributed to the ASD(HD&ASA) and the CJCS.

(i) The CJCS shall:

(1) Provide planning guidance to DoD Components for all special events for which DoD support may require the employment of military forces or centralized command and control.

(2) Review all requests for DoD support to special events, and, in coordination with the USD(P&R), provide advice on the effect the requested support will have on readiness and military operations.

(3) Prepare, staff, and issue orders and messages on DoD support to special events that has been approved by authorized DoD officials.

(4) Issue guidance to the Combatant Commanders on the implementation of this part.

(5) Process requests for DoD support to special events.

(6) Maintain sufficient staff to manage the day-to-day operational aspects of DoD support to special events.

(i) Establish and operate a system for delivering DoD assets to authorized recipients and for recovering loaned assets at the conclusion of the event.

(ii) Ensure the civil authorities and qualifying entities authorized to accept DoD assets provide a surety bond or other suitable insurance protection to cover the cost of lost, stolen, or damaged DoD property.

(iii) Plan and program for the life-cycle replacement of special events equipment procured under title 10 U.S.C. 372–374; title 10 U.S.C. 377; title 10 U.S.C. 2012; title 10 U.S.C. 2553–2555; and title 10 U.S.C. 2564.

(iv) When necessary, procure goods and services through contracting.

(8) Administer the expenditure of appropriated funds, and ensure that DoD is reimbursed for its DoD support to special events when required by law or DoD policy.

(i) With the assistance of DoD Components, provide cost estimates of DoD support to a special event that is under consideration for approval.

(ii) Upon approval, administer the execution of funding for DoD support to special events.

(iii) At the conclusion of DoD support to a special event, collect and provide a financial accounting for all DoD funds expended in support of that special event.

(9) Establish and maintain effective liaison with DoD Components for the timely exchange of information about special event projects.

(10) Provide other support to special events as directed.

(j) The Heads of the DoD Components shall:

(1) Designate and maintain an OPR for special events or a special events coordinator and provide that OPR designation and contact information to the CJCS within 60 days of the publication of this part; and provide updates to OPR designation and contact information within 30 days of a change.

(2) Provide personnel, equipment, and support to special events as directed.

(3) Ensure personnel supporting special events comply with applicable antiterrorism and force protection training and standards.

(4) Provide other support to special events as directed.

(k) *The Chief, National Guard Bureau (NGB),* under the authority, direction, and control of the Secretary of Defense through the Secretary of the Army and the Secretary of the Air Force, shall:

(1) Serve as the channel of communication between:

(i) The Secretary of Defense and the heads of the DoD Components (including the Secretary of the Army and the Secretary of the Air Force), and

(ii) The States on all matters pertaining to National Guard involvement in DoD support to special events.

Note to paragraph (k)(1): Direct liaison between the entities in paragraphs (j)(1)(i) and (j)(1)(ii) of this section should occur only in an emergency when time does not permit compliance with this part. In each such instance, the Chief, NGB, should be informed of the communication.

(2) Annually assess the readiness of the National Guard of the States to participate in DoD support to special events, and report on this assessment to the Secretary of Defense, the Secretaries of the Army and the Air Force, the USD(P&R), the ASD(HD&ASA), the Assistant Secretary of Defense for Reserve Affairs, the CJCS, and appropriate Combatant Commanders.

(3) Participate in the Joint Staff capability-based planning and assessments, the Joint Capabilities Integration and Development System, and the DoD planning, programming, budgeting and execution assessment for all actions pertaining to National Guard participation in DoD support to special events.

(4) Facilitate and deconflict the planning and use of National Guard forces among the States to ensure that adequate and balanced forces are available and responsive for DoD special event support, consistent with national security objectives and priorities.

§ 183.6 Procedures.

(a) *General Provisions.* (1) This section provides the basic procedures for DoD support to special events.

(2) As appropriate, amplifying procedures regarding DoD support to special events shall be published separately and maintained by the Office of the ASD(HD&ASA) and released as needed in the most effective medium consistent with DoD Directive 8320.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf*).

(b) *Special Event Process.*

(1) *Engagement.*

(i) Engagement may be initiated by the Department of Defense, civil authorities, or qualifying entities. If the initial engagement is not a written RFA, representatives from ASD(HD&ASA) and the Joint Staff will confer to determine actual requirements.

(ii) Engagement may involve informational briefings and meetings between DoD representatives and special event organizers, civil authorities, or qualifying entities. These informal engagements may result in non-DoD entities submitting an RFA to the Executive Secretary of the Department of Defense, requesting DoD support for a special event.

(iii) Once an RFA is received, it will be sent to ASD(HD&ASA) and the CJCS simultaneously for staffing and recommendation. Additional engagement with the requestor may be required to quantify the scope and magnitude of the support requested.

(2) *Planning.*

(i) The direction and focus of DoD special-event-planning will depend on the nature of the event and scope and magnitude of the support requested or anticipated. International events may require additional planning, procedures, and coordination with the government of the host country.

(ii) For NSSEs and events that may require the employment of military forces or centralized command and control, the CJCS will issue a planning order, requesting a Combatant Commander to initiate planning and notify potential supporting commands/organizations and the Chief, NGB, as appropriate. When possible, established CJCS-directed planning procedures will be used for the Combatant Commander to provide an assessment and request for forces.

(A) The NSSE designation process generally is initiated by a formal written request to the Secretary of Homeland Security by the State or local government hosting the event. In other situations where the event is Federally sponsored, an appropriate Federal official will make the request.

(B) Once the request is received by the DHS, the USSS will send an NSSE questionnaire to the responsible host official for completion. The request, completed questionnaires, and other supporting information are reviewed by the NSSE Working Group, including the DoD member of the NSSE Working Group, which provides a recommendation to the Secretary of Homeland Security regarding NSSE designation.

(C) The Secretary of Homeland Security makes the final determination to designate an event as an NSSE pursuant to Homeland Security Presidential Directive 7 (*see http://www.dhs.gov/xabout/laws/gc_1214597989952.shtm*). Once an event is designated an NSSE, certain other Federal departments and agencies have statutory duties and responsibilities.

(iii) There are numerous events where DoD support should be anticipated and a planning order issued to the appropriate Combatant Commander. These include, but are not limited to:

(A) The President's State of the Union Address or other addresses to a Joint Session of Congress.

(B) Annual meetings of the United Nations General Assembly.

(C) National Presidential nominating conventions.

(D) Presidential inaugural activities.

(E) International summits or meetings.

(F) State funerals.

(G) The National Boy Scout Jamboree.

(H) Certain international or domestic sporting competitions.

(iv) There are other events that the Department of Defense supports that do not involve the assignment of military forces or centralized command and control by Combatant Commanders, which include planning requirements by the host organizations. These include, but are not limited to:

(A) Military Department or Service-sponsored events, such as:

(*1*) The Marine Corps Marathon.

(*2*) The Army 10-Miler.

(*3*) Navy Fleet Weeks.

(*4*) Installation or Joint Service Open Houses.

(*5*) Service or Joint Air Shows.

(B) Community relations activities authorized in accordance with DoD Directive 5122.05 and DoD Instruction 5410.19.

(v) DoD may provide support to certain sporting events that are included under subsection (c) of section 2564 of title 10 U.S.C. by providing technical, contracting, and specialized equipment support. These events may be funded by title 10 U.S.C. 2564 and include:

(A) The Special Olympics.

(B) The Paralympics.

(C) Sporting events sanctioned by the United States Olympic Committee (USOC) through the Paralympic Military Program.

(D) Any international or domestic paralympic sporting event that are held in the United States or its territories that is governed by the International Paralympic Committee and sanctioned by the USOC for which:

(*1*) Participation exceeds 100 amateur athletes; and

(*2*) At least 10 percent of the athletes participating in the sporting event are members or former members of the armed forces.

(*3*) At least 10 percent of the athletes participating in the sporting event are either members or former members of military services who are participating in the sporting event based upon an injury or wound incurred in the line of duty in the armed force or veterans who are participating in the sporting event based upon a service-connected disability.

(vi) Planning for DoD support to the Olympics and certain other sporting events requires additional considerations.

(A) Subsections (a) and (b) of section 2564 of title 10 U.S.C. authorize the Secretary of Defense to provide assistance for the Olympics and certain other sporting events. Unless the event meets the specific requirements stated in paragraph (b)(2)(v) of this section, the Attorney General must certify that DoD security and safety assistance is necessary to meet essential security and safety needs of the event.

(B) The Department, led by the ASD(HD&ASA), will collaborate with the CJCS, the Department of Justice, including the FBI, and other appropriate DoD Components and Federal departments or agencies, usually as part of a Joint Advisory Committee (JAC), to provide a recommendation to the Attorney General on what categories of support the Department of Defense may be able to provide to meet essential security and safety needs of the event.

(C) Support other than safety and security may be authorized for sporting events, but only to the extent that:

(*1*) Such needs cannot reasonably be met by a source other than the Department of Defense.

(*2*) Such assistance does not adversely affect military preparedness.

(*3*) The requestor of such assistance agrees to reimburse to the Department of Defense, in accordance with the provisions of title 10 U.S.C. 372–374, title 10 U.S.C. 377, title 10 U.S.C. 2012, title 10 U.S.C. 2553–2555, title 10 U.S.C. 2564 and other applicable provisions of law.

(vii) Types of support that the Department of Defense can provide include, but are not limited to:

(A) Aviation.

(B) Communications (*e.g.,* radios, mobile telephones, signal integrators);

(C) Security (*e.g.,* magnetometers, closed-circuit televisions, perimeter alarm systems, undercarriage inspection devices).

(D) Operations and Command Centers (*e.g.,* design and configuration, video walls).

(E) Explosive Ordnance Detection and Disposal (technical advice, Explosive Ordnance Disposal teams, Explosive Detector Dog, dog teams).

(F) Logistics (transportation, temporary facilities, food, lodging).

(G) Ceremonial support (in coordination with the ASD(PA)).

(H) Chemical, biological, radiological, and nuclear threat identification, reduction, and response capabilities.

(I) Incident response capabilities (in coordination with the Department of Justice, the DHS, the Department of Health and Human Services, and in consultation with appropriate State and local authorities).

(viii) DoD personnel support to special events is provided using a total force employment concept that may include Active Duty Reserve Component military personnel (including National Guard forces performing duty pursuant to title 32 U.S.C. 502, DoD civilian personnel, and DoD contractor personnel.

(A) National Guard personnel conducting support to special events while on State Active Duty, or in a militia status, at the direction of their Governor or Adjutant General, are not considered to be providing DoD support to special events.

(B) This part does not limit or affect DoD and National Guard personnel volunteering to support special events during their non-duty time. This volunteer support is not considered as part of DoD support to special events. Volunteers are prohibited from obligating or using DoD resources to support a special event while in a volunteer status except as authorized by separate statute or authority.

(3) *Coordination.* (i) Coordination of DoD support to special events will

likely take place simultaneously with engagement and planning; operate across the full spectrum of strategic, operational, and tactical levels; and occur internally among DoD Components and externally with supported civil authorities and qualifying entities.

(A) Policy coordination between the Department of Defense and other Federal departments is the responsibility of ASD(HD&ASA). Other DoD Components may send representatives to these meetings with the prior concurrence of ASD(HD&ASA). Standing Departmental-level special events coordination meetings include:

(*1*) USSS-led NSSE Working Group.

(*2*) DHS-led Special Events Working Group.

(*3*) Department of State, Bureau of Diplomatic Security-led International Sporting Event Group.

(B) *Coordination Below the Strategic Level.* (*1*) Coordination within the Department is led by the ASD(HD&ASA) and is facilitated by the CJCS for the Combatant Commands and other Joint Commands and by other DoD Component Heads for their constituent elements.

(*2*) The CJCS will work with the Service Chiefs, Chief NGB, and the heads of DoD Components when subject matter expertise is needed for the event organizers. This will be based upon location and other criteria, as needed.

(ii) Inputs to the DHS-produced Integrated Federal Support Overview(IFSO) will be solicited by the CJCS and sent to the ASD(HD&ASA) for consolidation and deconfliction prior to final submission to DHS. DoD Component Heads not tasked by the Joint Staff will submit their input directly to ASD(HD&ASA).

(iii) RFAs for DoD support will adhere to the following:

(A) An RFA for DoD support to a special event may be made by Federal, State, or local civil authorities, or by other qualifying entities.

(B) RFAs will be in writing and addressed to the Secretary of Defense, the Deputy Secretary of Defense or the Executive Secretary of the Department of Defense, 1000 Defense, Pentagon, Washington, DC 20301–1000. Components who receive RFAs directly from the requestor will immediately forward them to the Executive Secretary for disposition, distribution, and tracking.

(C) The Executive Secretary will determine who within the Department has the lead action on the RFA. At a minimum, the RFA will be distributed to the ASD(HD&ASA) and the CJCS. If the RFA is for a single capability that a Component is the OPR or for which has Executive Agency. The Executive Secretary will send the RFA to that Component for action, and will provide an information copy to the ASD(HD&ASA) and the CJCS.

(D) Vetting of RFAs will be in accordance with DoD's Global Force Management process and consistent with criteria published in 32 CFR part 185.

(E) Unless directed otherwise, the Executive Secretary will communicate the Department's decision on support to a special event to the requesting authorities.

(4) *Execution.* Execution of DoD support to special events is a shared responsibility. The scope and magnitude of the support being provided will determine the OPR and level of execution.

(i) When joint military forces or centralized command and control of DoD support to a special event are anticipated or required, a Combatant Commander shall be identified as the Supported Commander in a properly approved order issued by the CJCS. The designated Combatant Command shall be the focal point for execution of DoD support to that special event with other DoD Components in support. Reporting requirements shall be in accordance with the properly approved order issued by the CJCS and standing business practices.

(ii) When there are no military forces required and no need for centralized command and control, DoD support to special events shall be executed by the CJCS or the head of a DoD Component, as designated in a properly approved order or message issued by the CJCS. Oversight of DoD support will be provided by the ASD(HD&ASA).

(5) *Recovery.* (i) Durable, non-unit equipment, procured by the Department of Defense to support a special event, shall be retained by the CJCS for use during future events in accordance with § 183.5(h)(7) of this part.

(ii) An After-Action Report shall be produced by the Combatant Command or OPR and sent to ASD(HD&ASA) and the CJCS within 60 days of completion of the event.

Dated: November 15, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–29764 Filed 11–24–10; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2010–5]

Gap in Termination Provisions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Copyright Office is proposing to amend its regulations governing notices of termination of certain grants of transfers and licenses of copyright under section 203 of the Copyright Act of 1976. The amendments are intended to clarify the recordation practices of the Copyright Office regarding the content of section 203 notices of termination and the timeliness of their service and recordation, including a clarification that the Office will accept for recordation under section 203 a notice of termination of a grant agreed to before January 1, 1978 as long as the work that is the subject of the grant was not created before 1978. Whether such notices of termination fall within the scope of section 203 will ultimately be a matter to be resolved by the courts.

DATES: Comments on the Notice of Proposed Rulemaking and Requests for Comments are due on or before December 27, 2010.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/termination.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the

Copyright Office at 202–707–8125 for special instructions.

FOR FURTHER INFORMATION CONTACT: Amanda Wilson Denton, Counsel for Policy and International Affairs, by telephone at 202–707–8125 or by electronic mail at *amwi@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act gives authors (and some heirs, beneficiaries and representatives who are specified by statute) the right to terminate certain grants of transfers or licenses within the time frames set forth in the statute and subject to the execution of certain conditions precedent. Termination rights (also referred to as "recapture rights") are equitable accommodations under the law. They allow authors or their heirs a second opportunity to share in the economic success of their works. Codified in sections 304(c), 304(d) and 203 of Title 17, respectively, they encompass grants made before as well as after January 1, 1978 (the effective date of the 1976 Copyright Act). However, the provisions do not apply to copyrights in works made for hire or grants made by will. Sections 304(c) and 304(d) establish termination rights for works subject to grants of transfers or licenses of copyright (or of any right under a copyright) made before January 1, 1978, the effective date of the 1976 Copyright Act. Section 203, which is the subject of this proposed rulemaking, establishes termination rights for works subject to grants of transfers or licenses executed by the author on or after the effective date of the 1976 Copyright Act.

This proposed rulemaking is intended to address a narrow fact pattern that was the subject of a notice of inquiry after some authors and their representatives brought concerns to the attention of the Copyright Office and some Congressional Offices. In a **Federal Register** Notice dated March 29, 2010 (75 FR 15390), the Office sought comments as to whether or how the termination provisions apply in circumstances where a grant was agreed to prior to January 1, 1978, but the work in question was created on or after January 1, 1978. In response to the Notice of Inquiry, the Copyright Office received sixteen initial comments and nine reply comments. These comments are available online on the Copyright Office Web site, at *http://www.copyright.gov/docs/termination/*.

Several of those commenters took the position that the termination right provided in section 203 of the Copyright Act should be available under the circumstances in question. They based this position on a number of legal and policy arguments, prominent among which was the argument that a grant is not fully executed under the law until the relevant work has been created. Therefore, pre-1978 grants for works not created until January 1, 1978 or later should be subject to termination under section 203. *See, e.g.,* Comment of Jane C. Ginsburg, Columbia University Law School at page 1; and Comment of Kenneth D. Freundlich, Freundlich Law, and Neil W. Netanel, UCLA Law School, at pages 5–6. This argument is closely related to the idea that the rights created by title 17 can vest only in actual works of authorship, making the creation date of the work central to the point in time at which any right under the Copyright Act, including the termination right, may be transferred. *See, e.g.,* Comment of Randall D. Wixen, Wixen Music Publishing, Inc., at 1. Several commenters also cited the legislative history of the 1976 Copyright Act and the express exceptions that are found within the termination provisions as evidence that Congress did not intend to preclude termination of pre-1978 grants of works created on or after January 1, 1978. *See, e.g.,* Comment of Bill Gable, Law Offices of Bill Gable, at page 2; and Comment of Niels Schaumann, William Mitchell College of Law, at page 4.

At least one comment, however, expressed skepticism that section 203 should apply to any fact patterns in which grants were made prior to January 1, 1978. It observed that there is some evidence that "Congress may have intended the term executed to mean signed" in other sections of the Copyright Act and that prior to the enactment of the Copyright Act of 1976, publications by the Copyright Office had expressed views consistent with the conclusion that a grant should be considered to be executed on the date the grant was signed. See Reply Comment of the Recording Industry Association of America, Inc. ("RIAA"), at pages 2–3.

Based on the comments received, the Copyright Office believes that there are legitimate grounds to assert that, in the case of a grant signed (or, in the case of an oral license, agreed to) before January 1, 1978 regarding rights in a work not created until January 1, 1978 or later, such a grant cannot be "executed" until the work exists. Therefore, the Office will record a notice of termination in such a case so long as the notice states that the grant was executed on a specified date that is on or after January 1, 1978. A person serving and submitting a notice of termination based on the rationale described above would be justified in including in the notice, as the date of execution of the grant, the date that the work was created. For purposes of clearly identifying the grant being terminated, it may be useful also to state the date the grant was signed. The Office's recordation of such notices of termination is without prejudice as to how a court might ultimately rule on whether the document is a notice of termination within the scope of section 203. See 37 CFR 201.10(f)(5).

Through the proposed regulatory amendments, the Office seeks to provide immediate practical guidance in light of the fact that the first deadlines for serving notices of section 203 terminations for grants executed in 1978 (if the terminating party wishes to terminate on the earliest possible date) will begin to expire next year. The amendments clarify that, consistent with existing recordation practices, the Office reserves the right to refuse a document for recordation as a section 203 notice of termination if the date of execution of the grant, as reflected in the document submitted as a notice of termination, falls before January 1, 1978. This practice is consistent with the law (17 U.S.C. 203(a)) and the existing regulations (37 CFR 201.10(b)(2)). The proposed amendments to the regulations underscore the consequences of failure on the part of an author or his heirs to comply with this aspect of section 203(a) of the Copyright Act, which can prevent recordation of the document as a notice of termination. Failure to record a notice of termination in a timely manner is a fatal error that will prevent termination from taking effect.

The Office also takes the opportunity in this proposed rulemaking to clarify certain circumstances under which the Office will refuse to index as notices of termination documents submitted under section 203, for reason of certain procedural failures drawn from the clear language of the Copyright Act. These circumstances include a date of execution of the grant that falls before January 1, 1978 (as discussed above), an effective date of termination that does not fall within the allowed statutory period (17 U.S.C. 203(a)(3)), improperly timed service of the notice of termination (17 U.S.C. 203(a)(4)(A)), or submission of documents for recordation as notice of termination on or after the effective date of termination (17 U.S.C. 203(a)(4)(A)). These circumstances are not intended to be an exhaustive list of procedural failures that may result in failure to record notices of termination.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 reads as follows:

Authority: 17 U.S.C. 702; Section 201.10 also issued under 17 U.S.C. 203 and 304.

2. Amend § 201.10 by revising paragraph (f)(4) as follows:

§ 201.10 Notices of termination of transfers and licenses.

* * * * *

(f) * * *

(4) Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice of termination is untimely. Conditions under which a notice of termination will be considered untimely include: the date of execution stated therein does not fall on or after January 1, 1978, as required by section 203(a) of title 17, United States Code; the effective date of termination does not fall within the five-year period described in section 203(a)(3) of title 17, United States Code; or the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination. If a notice of termination is untimely or if a document is submitted for recordation as a notice of termination on or after the effective date of termination, the Office will offer to record the document as a "document pertaining to copyright" pursuant to § 201.4(c)(3), but the Office will not index the document as a notice of termination. Any dispute as to whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction.

* * * * *

Dated: November 19, 2010.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 2010–29743 Filed 11–24–10; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10–207 and 09–158; FCC 10–180]

Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills. The Commission believes its proposals will allow consumers to understand the costs associated with use of their mobile service plans and take advantage of safeguards against bill shock by providing them with timely information to better manage those costs and thereby avoid incurring unexpected charges on their bills.

DATES: Comments are due on or before December 27, 2010. Reply comments are due on or before January 25, 2011. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (PRA), should be submitted on or before January 25, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 10–207], by any of the following methods:

■ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the *Federal eRulemaking Portal: http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 10–207. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

■ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Because two docket numbers appear in the caption of this proceeding, filers must submit two additional copies for the additional docket number. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8 a.m. to 7 p.m.

■ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, document FCC 10–180 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via e-mail at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov,* and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167, or via e-mail to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Policy Division, at (717) 338–2797 (voice), or e-mail *Richard.Smith@fcc.gov.*

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure,* Notice of Proposed Rulemaking (*NPRM*), document FCC 10–180, adopted and released on October 14, 2010, in CG Docket Nos. 10–207 and 09–158. The full text of document FCC 10–180 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www.bcpiweb.com.* Document FCC 10–180 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). 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.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due January 25, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–XXXX.

Title: Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure, CG Docket Nos. 10–207 and 09–158.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,500 respondents and 3,000 responses.

Estimated Time per Response: 40 to 100 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at sections 1–2, 4, 201, 258, 301, 303, 332, and 403 of the Communications Act of 1934, as amended.

Total Annual Burden: 210,000 hours.

Total Annual Costs: $10,000,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: In document FCC 10–180, the Commission proposes rules that would require mobile service providers to provide usage alerts, such as voice or text messages, to subscribers when they are approaching or reach an allotted limit of voice, text or data usage or are incurring international or roaming charges. In addition, the Commission proposes that mobile service providers make clear and ongoing disclosure of any tools they offer which allow subscribers to set usage limits or monitor usage balances. The provision of this information in a timely and easily accessible manner will allow consumers to avoid incurring sudden, unexpected charges on their wireless bills.

Synopsis

In document FCC 10–180, the Commission proposes that mobile providers actively provide consumers with notification messages to assist them in managing the costs of using their service and ensure that subscribers are not shocked by overage or roaming charges. Specifically, the Commission proposes that mobile providers provide notification when a subscriber is approaching their plan's allotted limit for voice, text, or data usage. The Commission seeks comment on whether such notifications should be provided in "real time," including any technical limitations or other considerations that should be taken into consideration when reviewing this issue. How should such notifications be provided in the case of multi-line family plans? The Commission seeks comment on the most effective way to provide this notification to consumers, including methods such as providing voice or text alerts. In addition, the Commission seeks comment on whether we should establish a precise usage level at which this initial notification message would be triggered. In reviewing this issue, the Commission seeks comment on the utility of providing multiple usage alerts to the consumer against the potential burdens to the wireless providers—particularly smaller providers—who must supply them. The Commission seeks comment on whether there are aspects of the existing usage alert systems or other tools that have proven particularly helpful to consumers in avoiding bill shock that it should consider incorporating in any rule it adopts to reduce bill shock. Alternatively, are there aspects of those tools that have reduced their effectiveness for consumers and should not be adopted? The Commission also

seeks comment on what it can learn from the experience with bill shock regulation in the European Union.

In addition, the Commission proposes that mobile providers supply a notification message to consumers once they reach their monthly allotment limit and begin incurring overage charges. The Commission seeks comment on whether it is sufficient to notify consumers that they have begun incurring overage charges or whether specific cost information and cut off mechanisms such as these would also be useful to consumers or create additional challenges. In that regard, the Commission seeks to balance consumer protections and expectations with the costs and technical limitations that might arise by imposing any additional requirements. In this regard, are there concerns or issues the Commission should consider with respect to smaller, regional and/or rural mobile providers? Moreover, the Commission does not intend for any alert system to hamper the ability of consumers to complete critical voice or data communications such as access to E911, and seeks comment on how to avoid such effects. In addition, the Commission seeks comment on whether consumers should be allowed to opt-out if they determine that they do not want to receive these mandatory usage alerts from their mobile service provider.

Similarly, the Commission proposes that mobile service providers supply a notification message to consumers when they are about to incur international or other roaming charges in excess of their normal rates. The Commission seeks comment on the technical feasibility of providing such international alerts, including whether such alerts require, in any way, the international provider's cooperation or any changes to its network. How often should such international alerts be provided? For example, should an alert be provided every time a consumer is about to incur international roaming charges? Should the Commission also require mobile providers to better disclose how to turn off any mobile device function that cause them to incur roaming charges? Several industry commenters contend that domestic roaming in the United States presents fewer difficulties to consumers because there is little or no domestic roaming for many subscribers. To what extent, if any, should this factor into our analysis? For example, should any roaming notification requirement be limited to international situations? Or should notification also be required for regional providers that use partners for domestic roaming? In addition, the Commission seeks comment on whether such notifications should include the applicable rates and associated charges for international or roaming charges, including any technical limitations—particularly for smaller providers—of providing this level of information in real time.

The Commission seeks comment on the length of time that would be required for mobile providers to implement any such usage alert requirement based upon a proposal that requires providers to notify subscribers when they are approaching and then reach the 100 percent threshold mark of their monthly usage allotment. Based on the comments received in response to the *Bill Shock PN,* published at 75 FR 28249, May 20, 2010, it may be easier for the national providers to start providing alerts. As a result, the Commission seeks comment on whether there are concerns, issues or cost considerations to implement such usage alerts that it should consider with respect to smaller, regional and/or rural mobile providers. Is there a need for varying implementation schedules between the larger and smaller, regional and/or rural providers to alleviate the burden for smaller providers? If so, what are the exact timeframes by which providers could modify their existing systems to comply with this requirement? Alternatively, should the Commission consider exempting smaller, regional and/or rural providers from any usage alert or roaming requirement due to the costs such a requirement might impose on them? If so, what size providers should this exemption apply to?

Methods for Reviewing and Capping Usage

The Commission proposes that mobile providers make clear, conspicuous and ongoing disclosure of any tools they offer which allow subscribers to either limit usage or monitor usage history. The Commission seeks additional information about the methods available for monitoring usage balances and ways to limit usage available to subscribers of smaller, regional, and rural mobile providers. Specifically, the Commission seeks comment on the best methods to ensure that consumers are made aware of the available tools for monitoring usage balances and limiting usage, how to access these tools and any applicable charges. For example, should mobile providers be required to provide this information on their bills or in annual bill inserts? What would be the most cost effective way to better ensure that consumers have access to this information and make full use of the currently available tools that can protect subscribers from bill shock? In particular, the Commission seeks comment on these issues as they relate to consumers with disabilities. What is the best method to minimize costs for smaller, regional and/or rural mobile providers while ensuring their customers have access to this information? The Commission seeks comment on how effective the existing usage controls have been in helping consumers avoid bill shock. The Commission also seeks comment on the extent to which the effectiveness of usage controls is impacted by the conditions under which they are provided to consumers. To the extent that existing usage control tools have proven effective in addressing bill shock, the Commission seeks comment on whether it should explore the possibility of mandating that all mobile service providers offer consumers the means to set their own usage limits. For example, should consumers be allowed to cap their usage in advance at a level specified by the customer (either for individual users or the entire account) or allowed to opt-out entirely of certain services (*e.g.* text messages) so that they cannot incur charges for any service that they don't want. Would such a requirement be overly burdensome for smaller, regional and rural providers?

Prepaid Services

The Commission seeks comment on whether prepaid mobile services should be exempt from any usage alert requirements that might evolve from this proceeding to address consumer bill shock. Prepaid services include traditional, pay-as-you-go services, in which customers buy minutes ahead of time on a card, as well as unlimited prepaid services, in which customers pay in advance for unlimited voice and/or data services each month with no long-term contract. The Commission seeks comment on these analyses, including those situations in which prepaid service users might benefit from receiving usage alerts. The Commission asks that parties distinguish between traditional, pay-as-you-go and unlimited prepaid services in their comments.

Scope of Covered Entities and Services and Legal Authority

The Commission seeks comment on the types of wireless services that should be covered by our proposals. Should any rules the Commission adopts apply to all communications services provided by mobile wireless providers, including voice, text, and data services? Should providers of mobile data services that do not also offer Commercial Mobile Radio Service

(CMRS) be included? Although mobile data services may be provided by companies that are also CMRS carriers, such services may also be provided by entities that do not offer any CMRS. Therefore, the Commission seeks comment on whether the scope of covered entities should be broader than CMRS providers. On the other hand, are there services for which these rules are not necessary?

Next, the Commission seeks comment on the best sources of authority for the Commission to adopt bill shock related obligations for the different types of mobile wireless services. Several provisions of Title III provide the Commission authority to establish license conditions in the public interest. In addition, to the extent that some of the mobile services covered by the rules promulgated in this proceeding are common carrier or telecommunications services, what other provisions of the Act, in Title II or elsewhere, would provide the Commission additional authority to impose bill shock-related obligations? What other authority-related issues should the Commission consider?

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in document FCC 10–180. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on document FCC 10–180 provided on the first page of this document. The Commission will send a copy of document FCC 10–180, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

In document FCC 10–180, the Commission summarized the record compiled in response to the *Consumer Information NOI* and *Bill Shock PN* indicating that mobile consumers receive inadequate usage-related information to manage the costs associated with their mobile service plans. Recent reports from both GAO and the Better Business Bureau confirm that wireless consumers continue to experience problems with unexpected charges appearing on their bills. In many cases, these charges result from consumers unknowingly exceeding a monthly allotment limit and incurring substantial overage charges. These charges can result in significant expenditures of time, effort, and money for more than 270 million American consumers that use mobile services. In the document FCC 10–180, the Commission seeks comment on proposals designed to empower consumers to avoid bill shock by ensuring that they receive baseline information about their monthly usage balances in a timely and consistent manner to make informed decisions regarding the costs associated with their mobile service.

Legal Basis

The legal basis for any action that may be taken pursuant to document FCC 10–180 is contained in sections 1–2, 4, 201, 258, 301, 303, 332 and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151–152, 154, 201, 258, 301, 303, 332 and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. The document FCC 10–180 seeks comment generally on mobile providers of voice, text and data services. However, as noted in section IV of the document FCC 10–180, the Commission is seeking comment on the scope of entities that should be covered by the proposals contained therein.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to FCC data, 434 carriers report that they are engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees. Therefore, the Commission estimates that 222 of these entities can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In document FCC 10–180, the Commission proposes requirements that would require mobile service providers to offer notification alerts to consumers regarding their usage balances. Specifically, the Commission proposes that mobile service providers offer notification alerts to consumers when: (1) Subscribers are approaching their plan's allotted limit for voice, text, and data usage; (2) subscribers have reached their monthly allotment limit and begin incurring overage charges for any subsequent use of that service and (3) subscribers will incur international or roaming charges not covered under their monthly plans. In addition, the Commission proposes that mobile service providers shall make ongoing disclosure of any tools or services they offer which allow subscribers to set usage limits or monitor usage balances including any applicable charges for those services. Many mobile service

providers already offer some of these services. However, mobile service providers may have to review and adjust their current alert systems to ensure compliance with these requirements. In addition, the Commission's proposed rules may require mobile providers to include information regarding how to request and use any usage controls and monitoring tools that they currently offer in the service providers' bills or in annual bill inserts. This would necessitate providing additional information to consumers via the monthly bill or an annual bill insert.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In document FCC 10–180, the Commission seeks comment on the costs for small providers to implement usage alerts including whether there is a need for varying implementation schedules between the larger and smaller providers to alleviate the burden for smaller providers. In addition, the Commission seeks comment on whether the Commission should consider exempting the smaller providers from any usage alert or roaming notification requirement due to the costs such a requirement might impose on them. In reviewing the frequency of mandatory usage alerts, the Commission seeks comment on the utility of providing multiple usage alerts to the consumer against the potential burdens to the wireless providers particularly smaller providers—who must supply them. Finally, the Commission seeks comment on the best methods to minimize costs for smaller, regional and/or rural mobile providers while ensuring their customers have access to information relating to any methods to monitor or set limits on usage offered by their service provider.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to the authority contained in sections 1–2, 4, 201, 258, 301, 303, 332 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 258, 301, 303, 332 and 403, document FCC 10–180 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 10–180, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228 and 254(k) unless otherwise noted.

1. § 64.2402 is added to subpart Y to read as follows:

§ 64.2402 Usage alerts and information for mobile services.

(a) This section shall apply to providers of mobile services as defined in paragraph (b) of this section. The purpose of this section is to require mobile service providers to provide consumers with timely, baseline information relating to their monthly usage so that consumers can avoid unexpected overage charges.

(b) [Reserved].

(c) *Usage notifications.* Mobile service providers shall provide notification alerts when:

(1) Subscribers are approaching an allotted limit for voice, text, and data usage.

(2) Subscribers have reached their monthly allotment limit and begin incurring overage charges for any subsequent use of that service.

(3) Subscribers will incur international or roaming charges that are not covered by their monthly plans, and notification if they will be charged at higher than normal rates.

(d) Mobile service providers shall make clear, conspicuous, and ongoing disclosure of any tools or services they offer which allow subscribers to set usage limits or monitor usage balances, including any applicable charges for those services. This information should be made available in a manner that is accessible to and usable by consumers with disabilities, in accordance with section 716 of the Communications Act of 1934, as amended (Act), and the Commission's rules implementing sections 255 and 716 of the Act.

[FR Doc. 2010–29669 Filed 11–24–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, 246, and 252

RIN 0750–AG62

Defense Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights (DFARS Case 2010–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense.

ACTION: Proposed rule with request for comments; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on patents, data, and copyrights. The comment period is being extended an additional 30 days to provide additional time for interested parties to review the proposed DFARS changes.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before December 27, 2010, to be considered in the formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2010–D001, using any of the following methods:

○ *Regulations.gov http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D001" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D001." Follow the instructions provided at the "Submit

a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D001" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D001 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 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. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** on September 27, 2010 (75 FR 59412), with a request for comments by November 26, 2010. DoD is extending the comment period for 30 additional days to provide an additional time for interested parties to review the proposed DFARS changes.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–29806 Filed 11–24–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket No. PHMSA–2009–0203]

Pipeline Safety: Technical Pipeline Safety Advisory Committee Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The committee will meet to consider and vote on a rulemaking to apply the Federal pipeline safety regulations to the remaining unregulated rural onshore hazardous liquid low-stress pipelines in accordance with current law.

DATES: The meeting will be on Monday, December 13, 2010, 1 p.m. to 4 p.m. EST. The THLPSSC will take part in the meeting by telephone conference call. Attendees should register in advance at *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=68.* PHMSA will post any new information including meeting presentations on the PHMSA/Office of Pipeline Safety Web page (*http://PHMSA.dot.gov*) about 15 days before the meeting takes place.

ADDRESSES: The public may attend the meeting at the U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Washington, DC 20590, Room E27–302. For any questions, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by December 1, 2010.

Comments on the meeting may be submitted to the docket in the following ways:

• *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility, DOT, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.

• *Hand Delivery:* Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket numbers, PHMSA–2009–0203 and PHMSA–2008–0186 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that 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.*). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2009–0230 and PHMSA–2008–0186." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual who submitted the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 by December 1, 2010.

FOR FURTHER INFORMATION CONTACT: For information about the meetings, contact Cheryl Whetsel by phone at 202–366–4431 or by e-mail at *cheryl.whetsel@dot.gov* or for technical contents about the proposed rule contact Mike Israni by phone at 202–366–4595 or by e-mail at *mike.israni@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and make a statement during the advisory committee meetings. For a better chance to speak at the meetings, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by December 1, 2010.

II. Committee Background

The THLPSSC advises PHMSA on proposed safety standards, risks assessments, and safety policies for hazardous liquid pipelines. The committee falls under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and is authorized

by the Federal pipeline safety law (49 U.S.C. 60115). The committee consists of 15 members—with one-third of the membership selected from each of three groups: Federal and state government, the regulated industry, and the public. The committee advises PHMSA on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard. PHMSA staff may also provide an update on several regulatory and policy initiatives if time allows.

III. Preliminary Agenda

Pursuant to Section 4 of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Pub. L. 109–468), PHMSA published a proposed rule titled: "Pipeline Safety: Applying Safety Regulation to All Rural Onshore Hazardous Liquid Low-Stress Lines" on June 22, 2010 (75 FR 35366). The meeting agenda will include the committee's discussion and vote on the proposed rule, and on the associated regulatory analysis and environmental assessment.

Issued in Washington, DC, on November 19, 2010.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2010–29689 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 75, No. 227

Friday, November 26, 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

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Departmental Management, Office of Advocacy and Outreach, USDA.

ACTION: Notice of public meetings.

SUMMARY: The Office of Advocacy and Outreach is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss and explore USDA policy options designed to create and sustain "New and Beginning Farmers and Ranchers."

DATES: The public meetings will be held December 15th and 16th, 2010. Opportunities for public comment will be made available on December 15th, 2010, from 9 a.m. to 11:45 a.m., and 1 p.m. to 4 p.m. The second meeting will be held on December 16th, 2010, from 9 a.m. and end at 4 p.m. Requests to make oral statements should be received no later than 12 noon EDT on December 13th, 2010. For more information, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: All meetings will be located in Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit their request in writing (letter, fax, or e-mail) to Quinton N. Robinson, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Departmental Management, Office of Advocacy and Outreach, Department of Agriculture, 1400 Independence Avenue, SW., Room 520 Whitten, STOP, Washington, DC 20250–0522; fax (202) 720–205–5490; phone (202) 720–3058; e-mail *Quinton.Robinson@dm.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Quinton N. Robinson at 202–720–3058.

SUPPLEMENTARY INFORMATION: Requests to make oral statements should be received no later than 12 noon EDT on December 13th, 2010. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1 p.m. on December 15th, 2010. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Section 5 of the Agriculture Credit Improvement Act of 1992 (Pub. L. 102–554) requires the Secretary of Agriculture to establish the New and Beginning Farmer and Rancher Advisory Committee for the purpose of advising the Secretary on: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by Section 309(i) of the Consolidated Farm and Rural Development Act (this program consists of Federal and State beginning farmer programs that provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

USDA's Departmental Management's Office of Advocacy and Outreach is responsible for the performance and oversight of the New and Beginning Farmer and Rancher Advisory Committee pursuant to Section 14013 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246.

If special accommodations are required, please contact Mr. Robinson at the address specified above, by COB December 3, 2010.

Signed in Washington, DC on November 19, 2010.

Pearlie S. Reed,

Assistant Secretary for Administration.

[FR Doc. 2010–29697 Filed 11–24–10; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 25, 2011.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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 information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Michele Brooks, Director,

Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–0784.

Title: Electric System Emergency Restoration Plan.

OMB Control Number: 0572–0140.

Type of Request: Extension of a currently approved collection.

Abstract: The term "critical infrastructure" is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." Electric power systems have been identified in Presidential Decision Directive 63 (PDD–63) as one of the critical infrastructures of the United States.

A substantial portion of the electric infrastructure of the United States resides in, and is maintained by, rural America. RUS is uniquely coupled with the electric infrastructure of rural America and its electric borrowers serving rural America. To ensure that the electric infrastructure in rural America is adequately protected, RUS requires that all electric borrowers conduct a Vulnerability and Risk Assessment (VRA) of their respective systems and utilize the results of this assessment to enhance an existing Emergency Restoration Plan (ERP) or create an ERP.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 676.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 338 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 19, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–29768 Filed 11–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Buckhorn Exploration Project 2010, Okanogan–Wenatchee National Forest, Okanogan County, WA

Joint Lead Agencies: Forest Service, Department of Agriculture; and Department of Natural Resources, Washington State.

Cooperating Agencies: Bureau of Land Management, Department of the Interior; and Department of Ecology, Washington State.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, in cooperation with the Department of the Interior, Bureau of Land Management (BLM), Washington State Department of Natural Resources (DNR), and Washington Department of Ecology (WADOE), will prepare an Environmental Impact Statement (EIS) for a proposal by Echo Bay Exploration, Inc. (Echo Bay) to explore their mineral holdings in Township 40 North, Range 30 East, Sections 1, 12 to 15, 22 to 27, and 34 to 36; and in Township 40 North, Range 31 East, Sections 5 to 9 and 16 to 20, W.M.

Proposed exploration operations will be located in Okanogan County, Washington on unpatented mining claims on public lands administered by the Tonasket Ranger District of the Forest Service and the Wenatchee Field Office of the BLM. Exploration operations will also be located on state mineral lease lands, private lands, and patented mining claims administered by the Washington State Department of Natural Resources.

The EIS will evaluate a range of reasonable alternatives to the proposed action and will assess the potential impacts of each alternative. The public will have an opportunity to comment on the EIS, including the range of alternatives and the impacts analysis.

The agencies are giving notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this analysis must be received by January 3, 2011. A public information meeting is planned to be held in Oroville, Washington on December 14, 2010 at the Oroville High School Commons from 5 to 7:30 p.m. Details concerning any additional public meetings, none presently scheduled, will be announced via local news media outlets. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in September 2011. The Final EIS is expected to be filed with the EPA in April 2012.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Phillip Christy, District Environmental Coordinator, 1 West Winesap, Tonasket, WA 98855, phone (509) 486–5137. Comments may also be sent via e-mail to *comments-pacificnorthwest-okanogan-tonasket@fs.fed.us*, or via facsimile to 509–486–1922. Electronic comments must be part of an e-mail message, or as an attachment in either Microsoft Word (doc or docx), Rich Text Format (rtf), or Portable Document Format (pdf). Electronic comments containing viruses will be rejected.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Phillip Christy, District Environmental Coordinator, 1 West Winesap, Tonasket, Washington 98855, phone (509) 486–5137, Kelly Courtright, BLM Mining Engineer, 1103 N. Fancher Road, Spokane, WA 99212, phone (509) 536–1218, or Fred Greef, SEPA Coordinator, Washington State Department of Natural Resources, P.O. Box 7015, Olympia, WA 98504–7015, phone (360) 902–1628. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The General Mining Law of 1872, as amended, provides Echo Bay the statutory right to explore for and develop mineral resources on federally administered lands. Federal policy encourages the development of federal mineral resources and requires reclamation of disturbed federal lands. This right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of federal lands and to provide for reasonable reclamation.

The BLM administers the surface acres of public land for which the BLM is responsible and the federal subsurface mineral estate under the Mining Law and the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA also governs the BLM's administration of public lands not open to location under the Mining Law. The Mining Law allows the location and use of mining claims "under such regulations prescribed by law" and Section 302(b) of FLPMA and

recognizes the entry and rights of mining claimants while directing that the BLM take any action necessary to prevent unnecessary or undue degradation of the lands. These two laws form the primary statutory basis for Surface Management Regulation codified at 43 CFR 3809 and BLM's purpose and need in reviewing and approving the Plan.

Under Washington State mining laws, metal mining/milling as an industry is allowable if it can be accomplished in an environmentally sensitive manner (RCW 78.56). It is the intent of Washington State laws to ensure a high degree of environmental protection while allowing the proper development and use of the state's natural resources, including its mineral resources. The Washington State Surface Mining Reclamation Act (RCW 78.44) addresses exploratory drilling and reclamation activities in the State of Washington.

Echo Bay has requested authorization to start this program of exploration drilling in the fall of 2011 or winter of 2012. The prospecting and exploration drilling operations would continue for approximately 5 years. Concurrent reclamation would be conducted where safe and practical to do so. Reclamation monitoring would continue for approximately three years following the completion of reclamation operations.

Echo Bay's Plan of Operations may be viewed on-line at *http://www.fs.fed.us/r6/wenatchee/projects/projects.shtml?project=32875.*

Purpose and Need for Action

The purpose and need for the project is to respond to Echo Bay's request to collect further information regarding economic gold resources present within the proposed exploration boundaries surrounding Buckhorn Mountain using geophysical and geochemical studies and exploration drilling and to develop reasonable mitigation to protect surface resources.

Under 36 CFR 228.8 all operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources including air quality, water quality, solid wastes, scenic values, fisheries and wildlife habitat, roads, and at the earliest possible time reclamation should take place.

The BLM under 43 CFR 3809.1(a) must prevent unnecessary and undue degradation of public lands by the operations authorized by the mining laws, and (b) provide the maximum possible coordination with appropriate State agencies. Also, in compliance with 43 CFR 3809.203(b) the "BLM will continue to be responsible for all land-use planning on public lands and for implementing other Federal laws relating to the public lands for which the BLM is responsible." Additionally, an Environmental Impact Statement is required to be prepared in accordance with BLM Handbook 1790.1, 7.2(7), prior to the approval of any mining operation where the area to be mined, including any area of disturbance, over the life of the mining plan is 640 acres or larger in size.

Since the Okanogan National Forest Land and Resource Management Plan could not predict specifics as to where, when, and what kind of mineral exploration or development might be proposed, nor specific needs of that exploration or development in terms of surface resources, the Plan anticipated that the intensive surface use required for mineral exploration and development projects might require Forest Plan amendments (LRMP, page IV–21). To allow Echo Bay reasonable access to their mining claims, it may be necessary to amend the Okanogan National Forest Land and Resource Management Plan (LRMP) relating to road densities, deer cover, operating period, impacts to old growth, disturbance, and impacts to Management Requirement cells.

Proposed Action

The Forest Supervisor for the Okanogan-Wenatchee National Forest and the Field Manager for the BLM's Wenatchee Field Office propose to authorize Echo Bay to explore their mining claims in a logical sequence of prospecting and exploration activities beginning in 2011 or 2012. Exploration would use a phased approach to minimize adverse environmental impacts and to prevent unnecessary and undue degradation of public lands and surface resources by initially using remote sensing and other non-surface disturbing prospecting techniques to identify target areas.

Exploration drilling within the identified target areas would leave other areas of low mineral potential undisturbed. Since a phased exploration approach is proposed, annual road usage and locations of construction activities would be dependent upon the results of each phase. The initial drill hole spacing would range from 400 to 500 feet between drill holes. If initial drill results are favorable, the drill program would be modified for a drill spacing of 200 to 250 feet. Continued favorable drill results would require drill hole spacing from 50 to 100 feet apart. The drill holes would average 1200 feet deep (600 to 1600′).

A work plan describing the activities for the upcoming season (or as often as changes are made to the authorized work plan), including maps showing specific locations of drill sites, road alignments, water conveyance and storage locations, monitoring locations, or ancillary facilities, would be submitted for review and approval to the administering agency prior to starting construction of drill pad sites, drill access roads, and ancillary facilities or initiation of a geophysical or geochemical survey.

The Forest Service, BLM, WADOE, and DNR propose to authorize the following total disturbances within a 10,041 acre area over five years (all land ownerships):

1. Construct up to 72.3 miles (380,810 linear feet) of new drill roads;
2. Construct up to 675 new drill pad sites;
3. Drill up to 965 exploration drill holes;
4. Construct up to 33 acres of water conveyance and storage facilities, including a new water well on National Forest System (NFS) lands;
5. Develop up to 8 acres of ancillary disturbance for staging of equipment and materials;
6. Convert up to 4 drill holes on NFS lands to monitoring wells; and
7. Allow access 24 hours/day, 365 days/year, utilizing up to 20 drill rigs at any given time, weather permitting.

Under the proposed Block Permitting approach, the amount of road and pad disturbance would be dependent on the results from phased exploration activities and may vary from that described above. However, the total amount would not exceed 507 acres of new disturbance. Since this is an exploration project, Echo Bay is unable to predict the exact locations of all exploration roads and drill sites at this time. As exploration proceeds through the phases, and as resource information becomes available from the EIS Baseline Study Programs, Echo Bay would provide the agencies with specific proposed locations of disturbance in Work Plans for agency review and approval. The Work Plans would be designed to avoid (if possible) impacts to important resources (i.e. cultural, wildlife, riparian) and areas of concern identified through Baseline Study Programs. Appropriate bonding would be in place prior to all phases of proposed surface disturbance work described in the Work Plans.

The proposed number of drill holes by surface jurisdiction: Private lands—80, BLM managed lands—235, State of Washington Mineral Leases—170, and

Forest Service managed lands—480 (total 965).

The proposed acres of surface disturbance by jurisdiction are: Private lands—30 acres, BLM administered public lands—117 acres, State of Washington Mineral Leases—60 acres, and Forest Service administered public lands—300 acres (total 507 acres).

If an action alternative is selected, the Forest Supervisor for the Okanogan-Wenatchee National Forest proposes to amend the Okanogan National Forest Land and Resource Management Plan (LRMP) relating to road closures and densities in the Myers Creek, Cedar Creek, and Nicholson Creek drainages. To offset the opening of roads in these drainages, roads closures may be required as mitigation, including temporary closing of Forest Road 3575–100 from near the junction with Forest Road 3575–120 to near the junction with Forest Road 3575–101 and temporary closing of Forest Road 3575–290. On NFS land, a new temporary management prescription for exploration operations with associated standards and guidelines may be developed and would be an integral part of each of the action alternatives.

1. Riparian standards and guidelines may be amended to allow the construction of drill roads through riparian areas and the construction of drill pads and the drilling of exploration holes in riparian areas;

2. Deer winter and summer cover standards for hiding, thermal, and snow intercept thermal cover may be amended to allow construction of new drill roads and pads where needed for exploration;

3. Road density standards in Management Areas (MA) 14, 25, and 26 may be amended to allow the construction of necessary drill roads;

4. Visual quality objective standards may be amended to allow the construction of drill roads and pads and drilling related activities, as needed;

5. Raptor nests may not be protected and timing restrictions may not be followed to allow for year-round exploration activities;

6. Deer winter range timing restrictions in MA 14 and 26 may not be followed to allow orderly exploration activities. Motorized vehicle access may be allowed year-round;

7. Timber removal and motorized vehicle use in old growth stands, if any exist, may be required for exploration activities. No old growth stands have been presently identified; and

8. Wildlife Management Requirement cells may need to be moved, modified, or eliminated.

Once exploration and reclamation activities have ceased, the Forest Service would return the reclaimed areas to management under the goals and objectives of the underlying management areas or replacement management areas in any future LRMP.

Possible Alternatives

Depending upon significant issues raised related to the proposed action, alternatives to the proposed action may be formulated. Possible alternatives may include seasonal or timing restrictions, limiting the number of drill rigs operating at any one time, or yearly caps on the amount of drilling per year.

Possible alternatives may be formed based on the source and delivery of water needed for drilling including the possibility of eliminating the well on NFS lands and hauling all water used for the project from private and municipal wells off agency lands.

Possible alternatives may be formed based on the use of more helicopter-based drilling in the early stages of exploration, minimizing the construction of new drill access roads to areas of proposed intensive drilling or minimizing the need to build roads on steeper side slopes and in riparian areas.

Lead and Cooperating Agencies

The USDA Forest Service will be the lead agency (under the National Environmental Policy Act [NEPA]) in accordance with 40 CFR 1501.5(b), and is responsible for preparation of the EIS. The DNR will be the lead state agency (under the State Environmental Policy Act [SEPA]). The BLM will be a cooperating federal agency (under NEPA). The WADOE will be a cooperating state agency (under SEPA).

Responsible Officials

The Forest Supervisor for the Okanogan-Wenatchee National Forest will be the responsible official for this EIS and its Record of Decision (ROD) for NFS land. The Field Manager for the BLM's Wenatchee Field Office will be the responsible official for this EIS and its ROD on BLM administered lands. As the responsible officials, they will document the decision and reasons for their decision in the two RODs being prepared for federal lands.

The Washington DNR, Geology & Earth Resources Division Manager is the SEPA responsible official for EIS development, representing State and local agencies. The State does not prepare a formal decision for the EIS, but instead makes decisions based on this document in individual State permit decisions. The Forest Service decision will be subject to Forest Service Appeal Regulations in accordance with 36 CFR Part 215. The BLM decision will be subject to BLM Administrative Appeal Regulations in accordance with the regulations contained in 43 CFR, Part 4, and Form 1842–1.

Nature of the Decision To Be Made

The Forest Supervisor for the Okanogan—Wenatchee National Forest must decide whether or not to approve the Proponent's Plan of Operations as submitted, or approve a modified Plan of Operations with additional mitigation measures and monitoring items. The Forest Supervisor will consider both the impacts as a result of project activities on Forest Service administered public lands and rights-of-way, as well as cumulative impacts off of Forest Service administered public lands. Additionally, the Forest Supervisor must decide whether or not to grant a special use permit to Echo Bay to drill a well on NFS land and allow withdrawal of up to 120,000 gallons of water per day. The Forest Supervisor must decide whether or not the existing road use permit for the ore haul route should be amended to allow for additional commercial traffic on Forest roads. The Forest Supervisor must also decide whether or not to amend the Okanogan National Forest Land and Resource Management Plan to implement the project. The Forest Supervisor will consider both the impacts as a result of project activities on NFS administered public lands and rights-of-way, as well as cumulative impacts off of NFS administered public lands.

The Field Manager for the Wenatchee Field Office must decide whether or not to approve the Proponent's Plan of Operations as submitted, or approve a modified Plan of Operations with additional mitigation measures and monitoring items. The Field Manager will consider both the impacts as a result of project activities on BLM administered public lands and rights-of-way, as well as cumulative impacts off of BLM administered public lands.

Preliminary Issues

A number of preliminary issues were identified by the lead and cooperating agencies including:

(1) Exploration operations could adversely affect land used by wildlife, recreationists, Tribal members, and the grazing permittees;

(2) Exploration activities and additional project road use could result in cattle injury or death;

(3) Exploration activities, including additional road use, could cause

sedimentation and toxic substances to enter and degrade riparian areas and wetlands, decreasing water quality and adversely impacting fish, amphibians, and plants that use these areas;

(4) Exploration activities, including additional road use, may cause air quality degradation from dust, diesel exhaust, and toxic substances that could affect vegetation, tourism, recreation activities, viewpoints, aesthetic enjoyment of the area, and the quality of life, health, and safety for residents;

(5) Exploration activities, including drill vehicles and heavy trucks, could increase noise, which could impact tourism, recreation activities, aesthetic enjoyment of the area, and the quality of life and solitude for residents. Noise could carry for long distances and potentially impact adjacent property owners.

(6) Project activities could disturb wildlife, including threatened, endangered, and sensitive species, through human presence, noise, and increased road density, and could increase impacts from the semi-impermeable barrier to movement along the ore haul route as a result of additional traffic and affect the north-south wildlife corridor;

(7) Exploration activities may spread noxious weeds. The use of herbicides to treat noxious weeds found during monitoring has the potential to affect non-target species;

(8) The proposed action may contribute to cumulative impacts, which may have significant effects on the environment, and may contribute to cumulative effects of past, present, and reasonably foreseeable future actions;

(9) Exploration activities may adversely affect members of the Confederated Tribes of the Colville Reservation and may impact cultural resources of concern to Tribal members, and their rights reserved by Executive Order, to hunt, fish, and gather on the former north half of the Colville Reservation; and

(10) Exploration activities may cause light pollution potentially affecting tourism, recreational activities, viewpoints, and aesthetic enjoyment of the area, particularly for residents of the Myers Creek valley.

Permits, Authorizations, Approvals, or Licenses Required

The following permits, authorizations, approvals, or licenses would be required for the project:

Forest Service: a final Plan of Operations, a Road Use Permit modification and a Special Use Permit for a water well.

Bureau of Land Management: A final Mining and Reclamation Plan.

Environmental Protection Agency: A Stormwater Permit, a Spill Prevention and Countermeasure Plan (SPCC), a review of Section 404 permit, and Notification of Hazardous Waste Activity (no formal permit necessary).

U.S. Fish and Wildlife Service: Threatened and Endangered Species Consultation.

Department of Alcohol, Tobacco, and Firearms: Explosive User Permit.

U.S. Army Corps of Engineers/State of Washington Department of Ecology: A Joint Aquatic Resources Permit Application, including a Section 10 permit, a Section 404 Permit, and a 401 Water Quality Certification.

State of Washington Department of Ecology: New or transferred Water Rights, a National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit, a Notice of Intent to Construct or Decommission a Well, and an Air Operating Permit, Notice to Construct.

State of Washington Department of Natural Resources: A Forest Practices Permit, and a Surface Mine Exploration and Reclamation Permit for state and private lands.

Washington State Department of Fish & Wildlife: Hydraulic Project Approvals on State and private lands.

Washington Department of Archaeology and Historic Preservation: Historical and Archaeological Review and concurrence (Section 106).

Okanogan County: A Floodplain Development Permit, Conditional Use and Noise Control Permits, Solid Waste Handling, and Road Construction and/or Realignment Permit.

Scoping Process

This notice of intent initiates the scoping process, which guides development of the Environmental Impact Statement (EIS). A public information meeting is planned to be held in Oroville, Washington on December 14, 2010 at the Oroville High School Commons from 5 to 7:30 p.m. Details concerning any additional public meetings, none presently scheduled, would be announced via local news media outlets. The lead and cooperating agencies are seeking information, comments, and assistance from federal, state, and local agencies, Native American Tribes and other individuals and organizations that may be interested in or affected by the proposed project. Input submitted during this initial scoping period will be used in preparation of the Draft EIS. The agencies are seeking public and agency comment on the proposed action to determine if any additional issues arise. Additional issues may lead either to other alternatives, or additional mitigation measures and monitoring requirements.

The scoping process includes identifying potential issues; identifying major issues to be analyzed in depth and identifying those that are not significant and can be eliminated from detailed study; exploring alternatives to the proposed action; identifying potential environmental effects of this project; and notifying interested members of the public of opportunities to participate through personal contacts or written comment.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agencies' preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: November 19, 2010.

Bobbie R. Scopa,

Acting Forest Supervisor.

[FR Doc. 2010–29776 Filed 11–24–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest; Montana; Blackfoot Travel Plan EIS

AGENCY: Forest Service, USDA.

ACTION: Corrected Notice of Intent to prepare an Environmental Impact Statement for the Blackfoot Travel Plan.

SUMMARY: This notice extends the comment period for the Blackfoot Travel Plan from November 30, 2010 to January 7, 2011. This extension is a result of several requests for more time. The original notice was published in the **Federal Register** on October 29, 2010, FR Doc. 2010–27353 (75 FR 66718–66719). The Helena National Forest is preparing an Environmental Impact Statement (EIS) to analyze the effects of proposed changes to the existing motorized public access routes and prohibitions within the Blackfoot travel planning area. Consistent with the Forest Service travel planning

regulations, the resulting available public motorized access routes and areas would be designated on a Motor Vehicle Use Map (MVUM). Upon publishing the MVUM, public use of a motor vehicle other than in accordance with those designations would be prohibited.

DATES: Comments concerning the scope of the analysis must be received by January 7, 2011. The draft environmental impact statement is expected July 2011 and the final environmental impact statement is expected January 2012.

ADDRESSES: Send written comments to the Helena National Forest Lincoln Ranger District, 1569 Hwy 200 Lincoln, MT 59639. Comments may also be sent via e-mail to *comments-northern-helena-lincoln@fs.fed.us,* or via facsimile to 406–362–4253. Please indicate the name "Blackfoot Travel Plan" in the subject line of your e-mail.

FOR FURTHER INFORMATION CONTACT: Jaclyn Heinert, Interdisciplinary Team Leader.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The overall objective of this proposal is to provide a manageable system of designated public motorized access routes and areas within the Blackfoot Travel area, consistent with and to achieve the purposes of Forest Service travel management regulations at 36 CFR part 212 subpart B. The existing system of available public motor vehicle routes and areas in the Blackfoot Travel area is the culmination of multiple agency decisions over recent decades. Public motor vehicle use of the majority of this available system continues to be manageable and consistent with the current travel management regulation. Exceptions have been identified, based on public input and the criteria listed at 36 CFR 212.55, and in these cases changes are proposed to meet the overall objectives. The decisions will ensure compliance with the Forest Plan and Interagency requirements for grizzly bear security and habitat within the recovery zone.

Proposed Action

The Helena National Forest proposes the following changes to the existing motorized public access routes and prohibitions within the Blackfoot travel planning area. Consistent with the travel planning regulations at 36 CFR part 212 subpart B, the resulting available public motorized access routes and areas would be designated on a Motor Vehicle Use Map and the prohibition at 36 CFR 261.13 would take effect. 36 CFR 261.13 would prohibit public use of a motor vehicle other than in accordance with those designations.

The proposed action would:

- Change 1.8 miles of currently closed yearlong routes or user-created routes to open with seasonal restrictions.
- Change 5.1 miles of seasonally restricted routes to having a different seasonal restriction.
- Change 6.7 miles of currently closed yearlong or user-created routes to being open yearlong.
- Change 9.4 miles of seasonally restricted routes to become open yearlong.
- Put 82.1 miles of currently open routes into storage (where routes are self-maintaining in non-use status for up to 20 years by re-contouring access points, and removing culverts).
- Change 2.5 miles of open seasonally or open yearlong routes to closed yearlong.
- Close 7.9 miles (estimated) of user-created routes.
- Create 41.4 miles of new motorized trails from currently seasonally restricted, open yearlong, user-created, and previously decommissioned routes.
- Create 1.5 miles of single-track motorized trail from currently double-track motorized trail.
- Construct 1.6 miles of new road.
- Place 65.5 miles of currently closed routes into storage.
- Place 82.1 miles of currently open routes into storage.
- Obliterate 8.1 miles of closed yearlong, open yearlong, or user-created routes.
- Create 5.5 miles of non-motorized trails from currently closed or user-created routes.
- Create 1.5 miles of non-motorized trails from currently open or seasonally restricted routes.
- Create 13.7 miles of non-motorized trails from currently single or double-track motorized routes.
- Create 33 miles of mountain bike trails on National Forest (may also include non-motorized or motorized uses).

Responsible Official

The Responsible Official is Kevin Riordan, Helena National Forest Supervisor.

Preliminary Issues

Public input from previous scoping processes, and through input gathered from collaboration identified several areas of particular interest to the public. Many comments spoke specifically to the Continental Divide National Scenic Trail, the Helmville-Gould trail, grizzly bear, elk, and bull trout habitat and conflicts with motorized and non-motorized uses. These topics generated the most public interest regarding motorized and non-motorized uses.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Two opportunities to provide public comments in person will be provided. Staff members will be available on November 18 and November 30, 2010 from 4 p.m.–7 p.m. MDT at the Lincoln Ranger District, 1569 Hwy 200 Lincoln, Montana to visit with the public and discuss site-specific comments. If an individual, group or organization has any questions or would like to set up a meeting or field trip please contact Jaclyn Heinert at the Lincoln Ranger District of the Helena National Forest (406) 362–7000.

Dated: November 19, 2010.

Kevin Riordan,

Forest Supervisor.

[FR Doc. 2010–29772 Filed 11–24–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Dairy Industry Advisory Committee; Public Meeting

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: As required by the Federal Advisory Committee Act, as amended, the Farm Service Agency (FSA)

announces meetings of the Dairy Industry Advisory Committee (Dairy Committee) to discuss farm milk price volatility and dairy farmer profitability, and review various industry proposals and analysis. The Dairy Committee is responsible for making recommendations to the Secretary on policy issues impacting the dairy industry. We invite you to attend the meetings. The meetings are open to the public. Instructions regarding registering for and attending the meetings are provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Meetings:* The meetings will be on December 14–16, 2010, and January 11 and 12, 2011.

Registration: You must register by December 13, 2010, to attend the December public meeting and by January 7, 2011, to attend the January public meeting.

Comments: Written comments are due by December 16, 2010, for the December meeting and by January 12, 2011, for the January meeting.

ADDRESSES: The meetings will be held in room 3074 of the USDA Headquarters South Building at 1400 Independence Avenue, SW., Washington, DC 20250.

You may submit comments online: Go to *http://www.fsa.usda.gov/DIAC.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Designated Federal Official; phone: (202) 720–9886; e-mail: *solomon.whitfield@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

In August 2009, USDA established the Dairy Committee. The Dairy Committee reviews issues of farm milk price volatility and dairy farmer profitability. The Dairy Committee provides recommendations to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the dairy industry's needs. Equal opportunity practices were considered in all appointments to the Dairy Committee in accordance with USDA policies. The Secretary announced the members on January 6, 2010. Representatives include: Producers and producer organizations, processors and processor organizations, consumers, academia, a retailer, and a state representative.

The Dairy Committee will hold the meetings on the following dates and locations:

Date	Time	Location
December 14, 2010	1:00 p.m.–5:00 p.m.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.
December 15, 2010	8:00 a.m.–noon.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.
December 16, 2010	8:00 a.m.–5:00 p.m.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.
January 11 and 12, 2011	8:00 a.m. –5:00 p.m.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.

The purpose of the meetings for the Dairy Committee is to:

- Discuss farm milk price volatility and dairy farmer profitability, and
- Finalize the format for the report.

The meetings are open to the public. The dairy industry and public will not be allowed to provide oral comments at the meetings on December 14–16, 2010, and January 11 and 12, 2011; however, written comments will be accepted if received by December 16, 2010 for the December meeting and by January 12, 2011 for the January meeting.

Instructions for Attending the Meetings

Space for attendance at the meetings is limited. Due to USDA headquarters security and space requirements, all persons wishing to attend the Dairy Committee meetings must send an e-mail to *DIAC@wdc.usda.gov* by December 13, 2010 for the December meeting and by January 7, 2011, for the January meeting to register the names of those planning to attend. Public seating will be extremely limited. Registrations will be accepted until maximum room capacity is reached. Upon arrival at the USDA South Building, registered persons must provide valid photo identification in order to enter the building. Additional information about the public meetings, meeting agendas, materials and minutes including directions and how to provide comments is available at the Dairy Committee Web site: *http://www.fsa.usda.gov/DIAC.*

The comments received will be distributed to Dairy Committee members for consideration at the meetings.

If you require special accommodations, such as a sign language interpreter, please use the contact information above.

Notice of these meetings is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

Signed in Washington, DC, on November 19, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–29699 Filed 11–24–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Voluntary Self-Disclosure of Violations of the Export Administration Regulations.

OMB Control Number: 0694–0058.

Form Number(s): N/A.

Type of Request: Regular submission.

Burden Hours: 2,220.

Number of Respondents: 222.

Average Hours per Response: 10 hours.

Needs and Uses: BIS codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BIS's likely response to a given disclosure. Voluntary self-disclosures allow BIS to conduct investigations of the disclosed incidents faster than

would be the case if BIS had to detect the violations without such disclosures.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, OMB Desk Officer, via by e-mail *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: November 19, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29684 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Expanded Services Center Information and Reporting System.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 60.

Average Hours per Response: 80.

Burden Hours: 4,800.

Needs and Uses: Sponsored by the National institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) is a national network of locally-based manufacturing extension Competitive Award Recipients working with small manufacturers to assist in improving their productivity, profitability, and enhance their economic competitiveness. This collection will provide information regarding MEP Competitive Award Recipient performance of the delivery of technology and business solutions to U.S.-based manufacturers.

The information will also assist in determining the performance of the MEP Competitive Award Recipients at both local and national levels, will provide information critical to monitoring and reporting on MEP programmatic performance, and will assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2). The information will include the recipient inputs and activities including services delivered, clients served, Competitive Award Recipient staff, quarterly expenses and revenues, partners and affiliates, strategic plan, operating plans, and client success stories.

Affected Public: NIST MEP Competitive Award Recipients.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 OMB Desk Officer, Jasmeet Seehra, FAX Number (202) 395–5167, or via *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: November 22, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29723 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Dam Owner Survey to Support Management of Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic Salmon

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 25, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tara Trinko, 207–866–4238 or *Tara.Trinko@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new information collection.

In 2009, Atlantic salmon populations from the Androscoggin River in South Central Maine to the Dennys River in Eastern Maine were listed as Endangered under the Federal Endangered Species Act (ESA) (74 FR 29344, June 19, 2009). Dams were identified in the listing as a significant threat to the species survival and recovery. In order for recovery to occur, Atlantic salmon must have access to sufficient adult spawning habitat and juvenile rearing habitat to support the continued existence of a recovered salmon population. In furtherance of recovery, the National Marine Fisheries Service (NMFS) proposes to conduct a survey of dam owners.

This survey will allow NMFS to identify owners of non-Federal Energy Regulatory Commission (FERC) regulated dams and present to them opportunities to participate in programs that will aid them in complying with

the ESA. Owners of non-FERC dams often do not have regulatory oversight by a Federal agency and therefore, may not be aware of the requirements of the ESA and what this means to them. This survey will identify opportunities for fish passage improvements or dam removal that may fit into existing funding programs directed towards improving fish passage for diadromous fish species. Information from this survey will also be collected to educate NOAA on the current use, anticipated use, and community interest in small dams. This type of information will aid NMFS in developing tools to communicate and work effectively with dam owners within the GOM DPS. Information will be collected on current uses of dams, anticipated uses of dams, important issues or concerns to dam owners, and owners' interest in creating fish passage or removing dams. Known associations or organizations with an interest in the dams will also be identified.

Respondents will represent members of state and local agencies, private individuals and corporations, and commercial businesses. Results will be used to assist NMFS in identifying dam owners who are interested in discussing potential enhancements to Atlantic salmon habitats.

II. Method of Collection

The geographic spread of potential respondents is extensive and includes residents of Maine as well as nonresidents. Most respondents will be contacted via an initial letter and a follow-up telephone call. Personal interviews will be scheduled with a few respondents owning multiple (in excess of 5) dams and the information collected will be recorded electronically.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households, non-profit institutions; State, local, or tribal government; Federal government, business or other for-profit organizations.

Estimated Number of Respondents: 309.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost to Public: $0 for record keeping/reporting.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 22, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29722 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results Pursuant to a Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 17, 2010, the United States Court of International Trade (the "Court" or "CIT") sustained the U.S. Department of Commerce's (the "Department's") final results of redetermination pursuant to remand, wherein the Department determined to rescind the administrative review ("AR") with respect to Dongguan Bon Ten Furniture Co., Ltd. ("Bon Ten") pursuant to 19 CFR 351.214(j) and 19 CFR 351.213(d)(3).[1] The period of review ("POR") is January 1, 2007, through December 31, 2007. As the Court's decision is now final and conclusive, the Department is amending the final results of the 2007 AR of wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC") to reflect the Department's redetermination to rescind the AR with respect to Bon Ten.[2]

DATES: *Effective Date:* November 26, 2010.

FOR FURTHER INFORMATION CONTACT: Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4295.

SUPPLEMENTARY INFORMATION:

On August 17, 2009, the Department published its *Final Results.* In response to Bon Ten's arguments in its administrative case brief, the Department determined not to rescind the AR with respect to Bon Ten because Bon Ten had not demonstrated that it had no shipments during the 2007 AR POR outside of the single shipment reviewed during a new shipper review ("NSR") [3] that overlapped, in part, with the 2007 AR POR.[4] Additionally, because Bon Ten had not demonstrated its eligibility for a separate rate in the 2007 AR, the Department maintained its determination to treat Bon Ten as part of the PRC-wide entity.[5]

On August 14, 2009, Bon Ten submitted comments alleging that the Department made a ministerial error with respect to the *Final Results.* Bon Ten's ministerial error allegation focused on the Department's finding in the *Final Results* that Bon Ten had not provided any assertion prior to the submission of its case brief that it had no shipments during the 2007 AR POR outside of the shipment reviewed in the context of the NSR. Bon Ten argued that the Department did not consider its February 5, 2009, submission concerning its shipments during the 2007 AR POR in that finding.

In the *Amended Final Results,* the Department determined that, although it had inadvertently overlooked Bon Ten's February 5, 2009, submission for purposes of the *Final Results,* Bon Ten's allegation did not reflect a ministerial error. The Department reasoned that

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[1] *See Dongguan Bon Ten Furniture Co., Ltd.* v. *United States, Court No. 09–00396: Final Results of Redetermination Pursuant To Remand, dated August 9, 2010* ("*Remand Results*"); *see also Dongguan Bon Ten Furniture Co., Ltd.* v. *United States,* Slip Op. 2010–106 (September 17, 2010) ("*Bon Ten* v. *United States*").

[2] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 41374 (August 17, 2009) ("*Final Results*"), and accompanying Issues and Decision Memorandum, as amended by *Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 55810 (October 29, 2009) ("*Amended Final Results*").

[3] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Fourth New Shipper Reviews,* 73 FR 64916 (October 31, 2008) ("*NSR Final Results*").

[4] See *Final Results* at Comment 29.

[5] *See id.*

Bon Ten's allegation required reconsideration of a methodological issue, namely whether the review should be rescinded with respect to Bon Ten based upon its February 5, 2009, submission. Accordingly, the Department continued to treat Bon Ten as part of the PRC-wide entity for the AR in the *Amended Final Results.* However, the Department clarified that Bon Ten lost the separate rate status it was granted during the NSR starting on August 1, 2007, which is the first day of the administrative review that did not overlap with Bon Ten's NSR POR *(i.e.,* January 1, 2007, through July 31, 2007).[6]

On October 16, 2009, Bon Ten filed a complaint with the Court challenging the Department's determination not to rescind the AR with respect to Bon Ten and its determination that it could not address its failure to consider the February 5, 2009, submission as a ministerial error. On June 7, 2010, the Department filed an unopposed motion for voluntary remand with the Court so that the Department could fully consider and evaluate the overlooked record evidence, prepare draft remand results, issue a draft to the parties for comment, analyze those comments, and take such action as may be appropriate pertaining to Bon Ten. On June 8, 2010, the Court granted the Department's voluntary remand motion.

On June 11, 2010, the Department issued a supplemental questionnaire to Bon Ten, in which the Department provided Bon Ten the opportunity to submit a no-shipment certification. On June 15, 2010, Bon Ten submitted a certification that it had no shipments of WBF during the period August 1, 2007, through December 31, 2007, the portion of the 2007 AR POR that was not covered by the preceding NSR POR. On July 16, 2010, the Department released to all interested parties for comment: (1) Our draft redetermination pursuant to the remand finding that Bon Ten had properly submitted its no-shipment certification and stating our intent to rescind the AR with respect to Bon Ten; (2) a U.S. Customs and Border Protection ("CBP") data listing of all type 3 entries (*i.e.,* entries subject to antidumping and countervailing duty tariffs) classified under subheadings 7009.92.5000, 9403.50.9080, and 9403.50.9040 of the Harmonized Tariff Schedule of the United States that entered the United States during the 2007 AR POR and were exported/manufactured by Bon Ten; and (3) a draft version of Bon Ten's amended final cash deposit instructions reflecting the draft redetermination results, which the Department intends to send to CBP, pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.[7] The Department received no comments from interested parties on the Department's draft redetermination results, CBP data, or the draft version of the cash deposit instructions for Bon Ten.

On August 9, 2010, the Department filed with the CIT its final remand redetermination, wherein it determined to rescind the 2007 AR with respect to Bon Ten, pursuant to 19 CFR 351.214(j) and 19 CFR 351.213(d)(3). On September 17, 2010, the CIT sustained the final remand redetermination. On September 27, 2010, the Department notified the public that the Court's decision in this case was not in harmony with the *Final Results* and the *Amended Final Results.*[8] The deadline to appeal the CIT's decision was November 16, 2010, 60 days after the date the CIT sustained the final results of redetermination on remand (*i.e.,* September 17, 2010). The time period for appealing the CIT's decision has expired and no party has appealed the CIT's decision to the Court of Appeals for the Federal Circuit. Because there is now a final and conclusive court decision in this case, the Department is amending the final results of the 2007 AR with respect to Bon Ten.

Amended Final Results of Review

Rescission of Administrative Review, In Part

The remand redetermination explained that, in accordance with the CIT's instructions, the Department reconsidered the record information with regard to Bon Ten's no-shipment certification and separate-rate status for the 2007 AR. Based on this reconsideration, the Department has determined that Bon Ten made no shipments of WBF during the period August 1, 2007, through December 31, 2007, the portion of the 2007 AR POR that was not covered by the preceding NSR POR, pursuant to 19 CFR 351.214(j) and 19 CFR 351.213(d)(3). Therefore, the Department is amending the final results for Bon Ten, a company that was not selected for individual review, and the Department is rescinding the 2007 AR with respect to Bon Ten.

Cash Deposit Requirements

Pursuant to the final court decision, the Department will instruct CBP to collect a cash-deposit rate for Bon Ten, effective upon publication of these amended final results, based on the rate established in the final results of Bon Ten's NSR (*i.e.,* 0.00 percent) until completion of any subsequent administrative review of Bon Ten.[9] Bon Ten's cash deposit rate will remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Secretary'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 the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: *November 19, 2010.*

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–29825 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Amended Final Results* and the Department's memorandum entitled, "Ministerial Error Memorandum for the Final Results of the 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China," dated October 7, 2009, at Issue 4.

[7] *See* the Department's memorandum entitled, "2007 Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Due Date for Interested Parties to Submit Comments on Draft Results of Redetermination Pursuant to Remand," dated July 16, 2010.

[8] *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review,* 75 FR 59208 (September 27, 2010).

[9] *See NSR Final Results.*

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 100910448–0572–02]

RIN 0660–XA19

Copyright Policy, Creativity, and Innovation in the Internet Economy

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry; reopening of comment period.

SUMMARY: The Department of Commerce's Internet Policy Task Force announces that the closing deadline for submission of comments responsive to the October 5, 2010 Notice of Inquiry on copyright policy and innovation in the Internet economy has been reopened and will extend until 5 p.m. Eastern Standard Time (EST) on December 10, 2010.

DATES: Comments are due by 5 p.m. EST on December 10, 2010.

ADDRESSES: Interested parties are encouraged to file comments electronically by e-mail to *copyright-noi-2010@ntia.doc.gov.* Submissions should be in one of the following formats: HTML, ASCII, Word, rtf, or pdf. Paper comments can be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, Room 4725, 1401 Constitution Avenue, NW., Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including "Overnight" or "Express Mail") is subject to delivery delays of up to two weeks due to mail security procedures. Paper submissions should also include a CD or DVD in Word, WordPerfect, or pdf format. CDs or DVDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Comments filed in response to this notice will be made available to the public on the Internet Policy Task Force Web page at *http://www.ntia.doc.gov/internetpolicytaskforce.* For this reason, comments should not include confidential, proprietary, or business sensitive information.

FOR FURTHER INFORMATION CONTACT: For general questions about this Notice of Inquiry, contact: Dennis Amari, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington DC 20230, telephone (202) 482–1880; or Michael Shapiro, Office of External Affairs, United States Patent and Trademark Office, U.S. Department of Commerce, Madison Building, 401 Dulany Street, Alexandria, VA 22314, telephone (571) 272–9300; or send an e-mail to *copyright-noi-2010@ntia.doc.gov.* Please direct media inquires to NTIA's Office of Public Affairs at (202) 482–7002; or USPTO's Office of Public Affairs at (572) 272–8400.

SUPPLEMENTARY INFORMATION: On April 21, 2010, the Department of Commerce (the "Department") announced the formation of a Commerce-wide Internet Policy Task Force ("Task Force") to identify leading public policy and operational issues impacting the U.S. private sector's ability to realize the potential for economic growth and job creation through the Internet.[1] On October 5, 2010, the Task Force issued a Notice of Inquiry on the challenges of protecting copyrighted works online and the relationship between copyright law and innovation in the Internet economy with a closing date for comments of November 19, 2010.[2] In the interest of affording parties more time to submit comments, the Task Force is reopening the comment period. The Task Force announces that the closing deadline for submissions of comments responsive to the October 5, 2010 Notice of Inquiry is now extended until 5 p.m. Eastern Standard Time (EST) on December 10, 2010. Comments received after the original closing date of November 19, 2010 and before publication of this Notice of Inquiry will be considered timely and given full consideration.

Dated: November 19, 2010.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 2010–29686 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–60–P

[1] Commerce Secretary Locke Launches Internet Policy Task Force, Department of Commerce Press Release (April 21, 2010), at *http://www.commerce.gov/news/press-releases/2010/04/21/commerce-secretary-locke-announces-public-review-privacy-policy-and-i.*

[2] See 75 FR 61419 (October 5, 2010).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA056

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Louisiana/Mississippi Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Tuesday, December 14, 2010 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Crowne Plaza Hotel, 2829 Williams Blvd, Kenner, LA 70062; *telephone:* (504) 467–5611.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; *telephone:* (228) 875–5912.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will tentatively discuss fishery modeling analyses for water resource projects, mitigation/restoration for damages to habitat from preventative oil spill protective work, the Louisiana State Master Plan prioritization process, the status and future of the CWPPRA program, the Natural Resource Damage Assessment planning and restoration plan, the Long Term Recovery Plan After the Deepwater Horizon Oil Spill, and the Essential Fish Habitat 5-Year Review Report.

The Louisiana/Mississippi group is part of a three unit Habitat Protection Advisory Panel (AP) of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities that may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 19, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29691 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA057

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its River Herring and Shad Committee, its Joint Spiny Dogfish Committee, and its Executive Committee will hold public meetings.

DATES: The meetings will be held on Monday, December 13, 2010 through Thursday, December 16, 2010. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hilton Virginia Beach Oceanfront Hotel, 3001 Atlantic Avenue, Virginia Beach, VA 23451; telephone: (757) 213–3000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901–3910; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331 ext. 255.

SUPPLEMENTARY INFORMATION:

Monday, December 13, 2010

9 a.m. until 12 noon—The River Herring and Shad Committee will meet.

1 p.m. until 5 p.m.—There will be a Habitat-Ecosystems Workshop.

Tuesday, December 14, 2010

8 a.m. until 5 p.m.—The Habitat-Ecosystems Workshop will continue.

Wednesday, December 15, 2010

8:30 a.m.—The Council will convene.

8:30 a.m. until 3 p.m.—The Council will finalize summer flounder, scup, and black sea bass recreational management measures for 2011 in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Boards.

3 p.m. until 3:30 p.m.—The Council will receive an Overview of the Ocean Observatories Initiative.

3:30 p.m. until 4:30 p.m.—The Joint Spiny Dogfish Committee will meet.

4:30 p.m. until 5:30 p.m.—There will be a Scoping Hearing on Monkfish Amendment 6.

Thursday, December 16, 2010

8 a.m. until 9 a.m.—The Executive Committee will meet.

9 a.m.—The Council will convene.

9 a.m. to 9:30 a.m.—There will be a Briefing on Proposed Listing of Atlantic Sturgeon under Endangered Species Act (ESA).

9:30 a.m. until 1:30 p.m.—The Council will convene to conduct its regular Business Session, receive Organizational Reports, Council Liaison Reports, the Executive Director's Report, receive a report on the status of MAFMC's FMPs, Committee Reports, and any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Monday, December 13—The River Herring and Shad Committee will review Squid, Mackerel, and Butterfish Amendment 14 FMAT (Fishery Management Action Team) input on management integration issues and discuss the next steps. The Habitat-Ecosystems Workshop will include a presentation by Jennifer Lukens on Implementing the President's National Ocean Policy and there will be a Policy/Management Panel discussion.

On Tuesday, December 14—the Habitat-Ecosystems Workshop will continue with Tom Noji discussing the NMFS Habitat Assessment Improvement Plan (HAIP) and a Science Panel discussion. Mike Snyder will discuss the Mid-Atlantic Regional Council on the Oceans (MARCO) and there will be a Stakeholder Panel discussion.

On Wednesday, December 15—The Council in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will review and discuss the Monitoring Committee's recommendations and the Advisory Panel's recommendations on summer flounder, scup, and black sea bass management measures, and develop and approve management measures for the 2011 summer flounder, scup, and black sea bass recreational fishery. The Council will receive an Overview of the Oceans Observatories Initiative (OOI) from Jean McGovern, National Science Foundation (OOI) Program Director. The Joint Spiny Dogfish Committee will finalize issues to be resolved in Amendment 3. A Scoping Hearing for Monkfish Amendment 6 will be held regarding catch shares.

On Thursday, December 16—The Executive Committee will discuss the Visioning project update, consider updating priorities to accommodate a bio-economic analysis of the scup allocations, discuss the Council Communications Plan options, update the Advisory Panel Fishery Performance Report development, review the working group's recommendations for webinar compensation and travel policy to include in the Council's Standard Operating Practices and Procedures (SOPPs). The Council will be briefed on the Proposed Listing of Atlantic Sturgeon under ESA by the NMFS Office of Protected Resources. The Council will hold its regular Business Session to approve the June and October 2010 minutes and address any outstanding actions from the October 2010 meeting, receive Organizational Reports, Liaison Reports, the Executive Director's Report, an update on the status of the Council's FMPs, Committee Reports, and any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302–526–5251), at least 5 days prior to the meeting date.

Dated: November 22, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29728 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting by teleconference.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee), which will take place through a telephone conference call (teleconference). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on December 13, 2010, from 11 a.m. to 2 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held by teleconference. Members of the public may listen to the meeting by dialing toll-free to 1 (888) 769–8761 and entering passcode 2684385. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. Written public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230 or e-mailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or *jgattuso@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/advisory/spectrum.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. (*See* charter, at *http://www.ntia.doc.gov/advisory/spectrum/csmac_charter.html*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/advisory/spectrum.*

Matters To Be Considered: The Committee will discuss the work and review a draft report of its Incentives Subcommittee. There also will be an opportunity for public comment at the meeting. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting.

Time and Date: The meeting/teleconference will be held on December 13, 2010, from 11 a.m. to 2 p.m., Eastern Standard Time. The times and the agenda topics are subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held by teleconference. Members of the public may listen to the meeting by dialing toll-free to 1 (888) 769–8761 and entering passcode 2684385. An operator will provide further instructions. Public access will be limited to listen-only except during the public comment portion of the meeting. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. The call will be recorded. For information about access by or services for individuals with disabilities, please contact Mr. Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to participate and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to NTIA's Washington, DC office at the above-listed address. Such comments must be received by close of business on December 8, 2010, to provide sufficient time for review. Comments received after December 8, 2010, will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee web page at *http://www.ntia.doc.gov/advisory/spectrum.*

Dated: November 19, 2010.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–29685 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on December 13 and 14, 2010, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Monday, December 13

Open Session: 8:30 a.m.–12 Noon

1. Welcome and Introductions.
2. ETRAC Member Discussion Emerging Technology Analysis.
3. Public Comments.

Closed Session: 1 p.m.–4 p.m.

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

Open Session: 4:15 p.m.–5 p.m.

1. ETRAC Member Discussion Emerging Technology Analysis.
2. Public Comments.

Tuesday, December 14

Open Session: 8:30 a.m.–12 Noon

1. Welcome and Introductions.

2. ETRAC Member Discussion Emerging Technology Analysis.

3. Public Comments.

Closed Session: 1 p.m.–3:30 p.m.

1. ETRAC Member Discussion Emerging Technology Analysis.

The open sessions will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than December 6, 2010.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 4, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 22, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–29819 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA055

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a meeting of the Standing and Special Reef Fish Scientific and Statistical Committees.

DATES: The meeting will convene at 9 a.m. on Monday, December 13, 2010 and conclude by 3 p.m. on Wednesday, December 15, 2010.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Committee will meet to discuss attendance issues and problems with achieving a quorum, plus review several issues related to development of the generic annual catch limit/accountability measures amendment. These issues include a review of the latest version of the draft acceptable biological catch control rule, and a discussion on the use of judgment calls and use of mean catch to define the overfishing limit when setting the acceptable biological catch for data poor species. The Committee will also review the use of in-season accountability measures as part of a system of accountability measures for sectors that exceed their annual catch limits, and proposed revisions to species groupings to be used in setting annual catch limits. Finally, the Committee will make recommendations for acceptable biological catch, and overfishing limit if necessary, for all stocks in the generic annual catch limit/accountability measures amendment that are still in need of such recommendations.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 19, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29690 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA050

National Saltwater Angler Registry Program

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

ACTION: Notice.

SUMMARY: NMFS has established an annual fee of fifteen dollars ($15.00) for registration of anglers, spear fishers and for-hire fishing vessels to register under the National Saltwater Angler Registry Program.

DATES: The registration fee will be required effective January 1, 2011.

ADDRESSES: Gordon C. Colvin, Fishery Biologist, NMFS ST–12453, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gordon C. Colvin, Fishery Biologist; (301) 713–2367 x175; e-mail: *Gordon.Colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The final rule implementing the National Saltwater Angler Registry Program, 50 CFR part 600, subpart P, was published in the **Federal Register** on December 30, 2008. The final rule states that persons registering with NMFS must pay an annual fee effective January 1, 2011, and that NMFS will publish the annual

schedule for such fees in the **Federal Register.**

NMFS has determined that the annual registration fee for anglers, spear fishers and for-hire fishing vessels will be fifteen dollars ($15.00). All persons registering on or after January 1, 2011 will be required to pay the registration fee, unless they are exempt as indigenous people per the provisions of 50 CFR 600.1410(f).

Dated: November 22, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29810 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX08

Marine Mammals; File No. 14628

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that National Museum of Natural History, Smithsonian Institution (Charles W. Potter, Responsible Party), P.O. Box 37012, Washington, DC 20013, has been issued a permit to salvage, collect, receive/possess, and import/export parts from *cetaceans* and *pinnipeds* (except for walrus) for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On June 29, 2010, notice was published in the **Federal Register** (75 FR 37389) that a request for a permit to salvage, collect, import, export, receive, possess, archive, and conduct analyses of marine mammal and endangered species parts. The applicant is requesting parts of all marine mammal under NMFS jurisdiction to be included in this permit. No live animal takes are being requested and no incidental harassment of animals would occur. Parts would be archived by the NMNH and used to support research studies and incidental education. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 18, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–29811 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 26, 2010.

SUMMARY: On March 1, 2010, the Department of Commerce (the "Department") initiated three new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC") covering sales of subject merchandise made by Dongguan Huansheng Furniture Co., Ltd. ("Huansheng"); Hangzhou Cadman Trading Co., Ltd. ("Cadman"); and Wanvog Furniture (Kunshan) Co., Ltd. ("Wanvog") (collectively "respondents").[1]

The Department preliminarily determines that Huansheng and Cadman have not made sales at less than normal value ("NV"). The Department also preliminarily determines that Wanvog made sales in the United States at prices below NV. If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period January 1, 2009 through December 31, 2009 (the period of review or "POR"), for which the importer-specific assessment rates are above *de minimis.*

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

The antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005.[2] On January 21, 2010, the Department received a timely request for a new shipper review from Huansheng. On January 29, 2010, the Department received timely requests for new shipper reviews from Wanvog and Cadman. On March 1, 2010, the Department initiated new shipper reviews of Huansheng, Wanvog, and Cadman. *See Initiation Notice.*

On March 2, 2010, the Department issued an antidumping duty questionnaire to Huansheng, Wanvog, and Cadman. From March 2010 through September 2010, the Department received timely questionnaire and supplemental questionnaire responses from Huansheng, Wanvog, and Cadman.

On April 26, 2010, the Office of Policy issued a memorandum identifying six countries as being at a level of economic development comparable to the PRC for the instant POR. The countries identified in that memorandum are India, the Philippines, Indonesia, Thailand, Ukraine, and Peru.[3] On April

[1] *See Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 10214 (March 5, 2010) ("*Initiation Notice*").

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[3] *See* Memorandum entitled, "Request for a List of Surrogate Countries for New Shipper Review of the Antidumping Duty Order on Wooden Bedroom Furniture ("Furniture") from the People's Republic of China ("PRC")," dated April 26, 2010 ("Policy Memorandum").

27, 2010, the Department released the Policy Memorandum to interested parties and provided parties with an opportunity to submit comments regarding the selection of a surrogate country in the instant review.[4] On May 18, 2010, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, Petitioners) provided comments on surrogate country selection.[5] On June 15, 2010, Petitioners, Wanvog, and Huansheng provided publicly-available information to value factors of production ("FOP").[6] On June 21, 2010, Cadman provided publicly-available data to value its FOP.[7] On July 29, 2010, the Department received entry documents from CBP, which supported all three respondents' contentions that they had not made a sale of subject merchandise prior to the POR for these new shipper reviews. *See* Memorandum to the File from the Team through Howard Smith, Program Manager, Office 4, regarding "New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: U.S. Entry Documents," dated July 29, 2010.

Period of Review

The POR is January 1, 2009 through December 31, 2009.

Scope of the Order

The product covered by the order is wooden bedroom furniture which is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[8] highboys,[9] lowboys,[10] chests of drawers,[11] chests,[12] door chests,[13] chiffoniers,[14] hutches,[15] and armoires; [16] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [17] (9) jewelry armoires; [18] (10) cheval mirrors; [19] (11) certain metal parts; [20]

[4] *See* Letter from Howard Smith, Program Manager, Office 4, to All Interested Parties, requesting comments from interested parties regarding the selection of a surrogate country, dated April 27, 2010.

[5] *See* Letter from Petitioners regarding, "Wooden Bedroom Furniture From the People's Republic of China: Surrogate Country Comments," dated May 18, 2010 ("Petitioners' Surrogate Country Comments").

[6] *See* Letter from Petitioners regarding, "Wooden Bedroom Furniture From the People's Republic of China: Submission of Publicly Available Information to Value the Factors of Production," dated June 15, 2010 ("Petitioners' Surrogate Value Submission"); *see* Letter from Wanvog regarding, "Wooden Bedroom Furniture from the People's Republic of China: Submission of Publicly Available Surrogate Values for the Factors of Production of Wanvog Furniture (Kunshan) Co., Ltd.," dated June 15, 2010 ("Wanvog's Surrogate Value Submission"); *see also* Letter from Dongguan Huansheng regarding, "Wooden Bedroom Furniture from People's Republic of China—Dongguan Huansheng Surrogate Values for Preliminary Determination," dated June 15, 2010 ("Dongguan Huansheng's Surrogate Value Submission").

[7] *See* Letter from Hangzhou Cadman regarding, "Wooden Bedroom Furniture From the People's Republic of China: Hangzhou Cadman Surrogate Value Submission," dated June 21, 2010 ("Cadman's Surrogate Value Submission").

[8] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[9] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[10] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[11] A chest of drawers is typically a case containing drawers for storing clothing.

[12] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[13] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[14] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[15] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[16] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[17] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[18] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 in width, 18 in depth, and 49 in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[19] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[20] Metal furniture parts and unfinished furniture parts made of wood products (as defined above)

Continued

(12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds [21] and (14) toy boxes.[22]

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as "wooden * * * beds" and under subheading 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors * * * framed." The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9403.90.7000.

[21] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[22] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials ("ASTM") standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum, "Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box," dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

Bona Fide Sales Analysis

Consistent with the Department's practice, the Department investigated the *bona fide* nature of the sales made by Huansheng, Wanvog, and Cadman for this review. In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See, e.g., Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002)).

The Department preliminarily finds that the sales of subject merchandise made by Huansheng, Wanvog, and Cadman were made on a *bona fide* basis. Specifically, the Department preliminarily finds that: (1) The timing of the sales by themselves do not indicate that the sales might not be *bona fide;* (2) the price and quantity of the sales were within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States; (3) Huansheng, Wanvog, and Cadman and their customer(s) did not incur any extraordinary expenses arising from the transaction; (4) the new shipper sales were made between unaffiliated parties at arm's length; and (5) the merchandise was resold at a profit.[23] Therefore, the Department has preliminarily found that Huansheng, Wanvog, and Cadmans' sales of subject merchandise to the United States were *bona fide* for purposes of these new shipper reviews.

[23] *See* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding, "Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: *Bona Fide* Sales Analysis for Dongguan Huansheng Furniture Co., Ltd.," dated concurrently with the preliminary results; Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding, "Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: *Bona Fide* Sales Analysis for Hangzhou Cadman Trading Co., Ltd.," dated concurrently with the preliminary results; and Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding, "Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: *Bona Fide* Sales Analysis for Wanvog Furniture (Kunshan) Co., Ltd.," dated concurrently with the preliminary results.

Non-Market Economy Country Status

In every antidumping case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country.[24] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585, 22586–7 (May 2, 1994) (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See Notice of Final Determination of Sales at Less Than*

[24] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003) (unchanged in the final results, *Tapered Rolling Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003)).

Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

Separate Rate Recipients

1. Wholly Foreign-Owned

Wanvog provided evidence that during the POR it was a wholly foreign-owned company.[25] Therefore, consistent with the Department's practice, further analysis is not necessary to determine whether Wanvog's export activities are independent from government control, and we have preliminarily granted a separate rate to Wanvog.

2. Wholly Chinese-Owned Companies

Cadman and Huansheng are wholly Chinese-owned companies and are located in the PRC. Therefore, the Department has analyzed whether they have demonstrated the absence of both *de jure* and *de facto* government control over their export activities.

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by Cadman and Huansheng supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with Cadman's and Huansheng's business and export licenses;[26] (2) applicable legislative enactments decentralizing control over PRC companies;[27] and (3) formal measures by the government decentralizing control of PRC companies.[28]

B. Absence of *De Facto* Control

The Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by Cadman and Huansheng supports a preliminary finding of *de facto* absence of government control over their export activities based on the following: (1) Cadman and Huansheng set their own export prices independent of the government and without the approval of a government authority; (2) Cadman and Huanshengs' general managers have the authority to negotiate and bind the company in an agreement; (3) Cadman and Huansheng maintain autonomy from the government in making decisions regarding the selection of management; and (4) Cadman and Huansheng retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses.[29]

The evidence placed on the record by Cadman and Huansheng demonstrates an absence of *de jure* and *de facto* government control, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted separate rates to Cadman and Huansheng.

Surrogate Country

When the Department conducts an antidumping duty new shipper review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most circumstances, on the NME producer's FOP valued in a surrogate market-economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value all FOP in a single country, except for labor.

In the instant review, the Department identified India, the Philippines, Indonesia, Thailand, Ukraine, and Peru as being at a level of economic development comparable to the PRC.[30] Petitioners provided comments on the selection of a surrogate country by providing a submission from the fourth administrative review which contains an October 2007 report published by the international research firm CSIL Milano that demonstrates the significance of Philippine production of wooden furniture.[31] No other parties commented on the selection of a surrogate country. In addition, Petitioners and the three respondents submitted publicly-available Philippine data for valuing FOP.[32]

Based on the information on the record, we find that the Philippines is a significant producer of comparable merchandise. Specifically, *The Furniture Industry in the Philippines* report indicates that in 2006, Philippine manufacturers produced furniture valued at $813 million and the Philippines exported furniture valued at $279 million.[33] The *State of the Sector Report on Philippine Furniture 2006* indicates that wooden furniture has replaced rattan as the most commonly

[25] *See* letter from Wanvog regarding, "Wooden Bedroom Furniture from the People's Republic of China: Section A Questionnaire Response of Wanvog Furniture (Kunshan) Co., Ltd.," dated March 30, 2010 at A–2–A–12 and Exhibits A–3 and A–4.

[26] *See* letter from Cadman regarding, "Wooden Bedroom Furniture from the People's Republic of China; Section A Questionnaire Response of Hangzhou Cadman Trading Co., Ltd.," dated March 31, 2010 ("Cadman's Section A response") at Exhibit 3; *see also* letter from Dongguan Huansheng regarding, "Wooden Bedroom Furniture from People's Republic of China—Section A Response," dated March 23, 2010 ("Dongguan Huansheng's Section A response") at Exhibit A–2.

[27] *See* Cadman's Section A response at Exhibit 2; Dongguan Huansheng's section A response at Exhibit A–1.

[28] *See id.*

[29] *See* Cadman's Section A response at A3–A17 and exhibits 4 and 13; *see also* Dongguan Huansheng's Section A response at A2–A11 and exhibits A–3, A–4, and A–6.

[30] *See* Policy Memorandum. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[31] *See* Petitioners' May 18, 2010 submission at attachment.

[32] *See* Petitioners' June 15, 2010 submission; *see* Hangzhou Cadman's June 21, 2010 submission; *see* Dongguan Huansheng's June 15, 2010 submission; *see also* Wanvog's June 15, 2010 submission.

[33] *See* Petitioners' May 18, 2010 submission at attachment entitled, "2009 New Shipper Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China," dated January 15, 2010.

used material and accounted for 51 percent of all Philippine furniture exports.[34] In addition, both *The Furniture Industry in the Philippines* and *State of the Sector Report on Philippine Furniture 2006* describes the furniture sector as comprised of approximately 15,000 manufacturers and 800,000 workers.[35] Thus, record evidence shows that the Philippines is a significant producer of merchandise that is comparable to the merchandise under review.

With respect to data considerations in selecting a surrogate country, both Petitioners and the three respondents have submitted publicly-available Philippine data for valuing FOP. In addition, the Department used the Philippines as the primary surrogate country in the second, third, and fourth administrative reviews of this proceeding.[36] Therefore, based on its experience, the Department finds that the Philippines has, in the past, provided reliable, publicly-available data for valuing the FOP. However, for the input "natural gas," the Department has been unable to locate a suitable surrogate value from the Philippines. Therefore, we preliminarily determine to use India as a secondary surrogate country because the record shows that India is at a level of economic development comparable to that of the PRC[37] and is a significant producer of merchandise comparable to subject merchandise.[38] Moreover, India has publicly available, country-wide data that clearly identifies the relevant time period and prices for valuing gas.[39]

Thus, the Department has preliminarily selected the Philippines as the primary surrogate country because the record shows that the Philippines is at a level of economic development comparable to that of the PRC and is a significant producer of merchandise comparable to subject merchandise. Moreover, the record indicates that sufficient, contemporaneous, public Philippine data are readily-available.[40] Accordingly, we have selected the Philippines as the surrogate country and, accordingly, have calculated NV using Philippine prices to value Cadman's, Huansheng's and Wanvog's FOP.[41] In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value the FOP until 20 days after the date of publication of the preliminary results.[42]

Fair Value Comparisons

In accordance with section 777(A)(d) of the Act, to determine whether Cadman, Huansheng and Wanvog sold wooden bedroom furniture to the United States at less than NV, the Department compared the export price ("EP") and constructed export price ("CEP") of U.S. sales to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, the Department used EP as the basis for U.S. price for Huansheng's and Cadman's sales where the first sale to unaffiliated purchasers was made prior to importation and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, the Department calculated EP for Huansheng and Cadman by deducting the following expenses, where applicable, from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign inland freight from the plant to the port of exportation, and foreign brokerage and handling. Additionally, the Department based movement expenses on surrogate values where the service was purchased from a PRC company. For details regarding our EP calculations, see the Huansheng analysis memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results Analysis Memorandum for Dongguan Huansheng Furniture Co., Ltd.," ("Huansheng Analysis Memorandum"), dated concurrently with the preliminary results, the Cadman analysis memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results Analysis Memorandum for Hangzhou Cadman Trading Co., Ltd.," ("Cadman Analysis Memorandum"), dated concurrently with the preliminary results and the Surrogate Value Memorandum.

In accordance with section 772(b) of the Act, the Department used CEP as the basis for U.S. price for Wanvog's sales where Wanvog first sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under investigation is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. The Department calculated CEP for Wanvog based on delivered prices to unaffiliated purchasers in the United States and made deductions, where applicable, from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These movement expenses included foreign inland freight from the plant to the port of exportation, brokerage and handling, international freight, marine insurance, and U.S. customs duty. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, the Department

[34] *See id.*

[35] *See id.*

[36] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8277–78 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)); *see Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review,* 74 FR 6372, 6376 (February 9, 2009) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 41374 (August 17, 2009)); *see also Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 75 FR 5952 (February 5, 2010) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part,* 75 FR 50992 (August 18, 2010)).

[37] *See* Policy Memorandum.

[38] Memorandum to the File entitled, "2009 New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results," dated concurrently with the preliminary results ("Surrogate Value Memorandum").

[39] *See* "Factor Valuations" below for further details.

[40] *See* Petitioners' Surrogate Value Submission, Wanvog's Surrogate Value Submission, Dongguan Huansheng's Surrogate Value Submission, and Cadman's Surrogate Value Submission.

[41] *See* Surrogate Value Memorandum.

[42] In accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For details regarding the CEP calculation, *see* the Wanvog analysis memorandum entitled, "Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results Analysis Memorandum for Wanvog Furniture (Kunshan) Co., Ltd.," ("Wanvog Analysis Memorandum"), dated concurrently with these preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOP, because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOP reported by Huansheng, Wanvog, and Cadman for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available surrogates to value FOP, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the NV.[43] Where the facts developed in either U.S. or third-country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), the Department will have reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized.[44]

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination.[45]

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP reported by Huansheng, Wanvog, and Cadman for the POR. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly-available Philippine and Indian surrogate values. In selecting the surrogate values, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Philippine import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate (*i.e.*, where the sales terms for the market-economy imports were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

Where market-economy purchases of inputs were not made in significant quantities, we used import values for the POR from the Philippines National Statistics Office ("Philippines NSO") reported in U.S. dollars on a cost, insurance, and freight ("CIF") basis to value the following inputs: Woods (*e.g.*, pine, particleboard, *etc.*), adhesives and finishing materials (*e.g.*, glue, paints, sealer, lacquer, *etc.*), hardware (*e.g.*, nails, staples, screws, bolts, knobs, pulls, drawer slides, hinges, clasps, *etc.*), other materials (*e.g.*, mirrors, glass, leather, cloth, sponge, *etc.*), and packing materials (*e.g.*, cardboard, cartons, plastic film, labels, tape, *etc.*). The Philippines NSO is the only data source on the record that provides data on a net weight basis, which is the same basis as reported by Huansheng, Wanvog, and Cadman in reporting FOP. For a detailed description of all surrogate values used to value the reported FOP, *see* Surrogate Value Memorandum.

Where we could not obtain publicly-available information contemporaneous with the POR with which to value FOP, we inflated (or deflated) the surrogate values using the Philippine Wholesale Price Index or the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010) ("*Dorbest IV*"), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.*, 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision.

For the preliminary results of these new shipper reviews, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memorandum. The Department calculated a simple average industry-specific wage rate of $1.20 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 36 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under International Standard Industrial Classification—Revision 3 ("Manufacture of furniture; manufacturing n.e.c.") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and significant producers of comparable merchandise: Ecuador, Egypt,

[43] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001) ("*TRBs 1998–1999*"), and accompanying Issues and Decision Memorandum at Comment 1.

[44] *See TRBs 1998–1999* at Comment 1; *see also China Nat'l. Machinery Imp. & Exp. Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1338–39 (Ct. Int'l Trade 2003).

[45] *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

Indonesia, Jordan, Peru, the Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see* Surrogate Value Memorandum.

We valued electricity using contemporaneous Philippine data from *The Cost of Doing Business in Camarines Sur,* which is available at the Philippine government's Web site for the province: *http://www.camarinessur.gov.ph.* These data pertain only to industrial consumption. *See* Surrogate Value Memorandum.

We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. ("GAIL"). To be contemporaneous with the POR, the Department inflated this factor value using the POR-average wholesale price index for India.

We calculated the value of domestic brokerage and handling using World Bank's *Doing Business in the Philippines* report.

We calculated the surrogate value for truck freight using Philippine data from *The Cost of Doing Business in Camarines Sur,* which we have printed from the Philippine government's Web site for the province *http://www.camarinessur.gov.ph*) and placed upon the record with the Surrogate Value Memorandum.

We valued factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, using the audited financial statements for the fiscal year ending December 31, 2008, from the following producers: APY Cane International; Arkane International Corporation; Berbenwood Industries Inc.; Clear Export Industries, Inc.; Diretso Design Furnitures, Inc.; Heritage Muebles Mirabile Export Inc.; Horizon International Manufacturing, Inc.; Insular Rattan and Native Products Corp.; Interior Crafts Of The Islands, Inc.; Las Palmas Furniture, Inc.; and Wicker & Vine, Inc., which are Philippine producers of merchandise identical to subject merchandise that received no countervailable subsidies and that earned a before-tax profit in 2008. From this information, we were able to determine factory overhead costs as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A expenses as a percentage of ML&E plus overhead costs (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A expenses. For further discussion, *see* Surrogate Value Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period January 1, 2009, through December 31, 2009:

Exporter/manufacturer	Weighted-average margin (percent)
Exported and Produced by Dongguan Huansheng Furniture Co., Ltd	0
Exported and Produced by Wanvog Furniture (Kunshan) Co., Ltd	2.69
Exported by Hangzhou Cadman Trading Co., Ltd. and Produced by Haining Changbei Furniture Co., Ltd	0

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttals to written comments must be limited to the issues raised in the written comments and may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on a compact disk. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). If requested, a hearing normally will be held two days after the scheduled date for submission of rebuttal comments. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of any issues raised in written comments, within 90 days of the date on which these preliminary results are issued, in accordance with 19 CFR 351.214(i)(1), unless the time limit is extended. *See* 19 CFR 351.214(i)(2).

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. For assessment purposes, the Department will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer-specific assessment rate calculated in the final results of these reviews is above *de minimis.* The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for shipments of subject merchandise from Huansheng, Wanvog, and Cadman entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the cash deposit rate established for that combination in the final results of these reviews; (2) for subject merchandise exported by Huansheng but not produced by Huansheng, exported by Wanvog but not produced by Wanvog, and exported by Cadman but not produced by Haining Changbei Furniture Co., Ltd. ("Haining Changbei"), the cash deposit rate will continue to be the PRC-wide rate of 216.01 percent; (3) for subject merchandise produced by Huansheng but not exported by Huansheng or produced by Wanvog but not exported by Wanvog, the cash deposit rate will be the rate applicable to the exporter; and (4) for subject merchandise produced by Haining Changbei but not exported by Cadman, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results of these reviews is zero or *de minimis,* for one of the exporter/producer combinations listed in the table above, no cash deposit will be required for entries of subject merchandise from that exporter/

producer combination. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: *November 16, 2010.*

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–29828 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1722]

Reissuance of the Subzone Grant of Authority for Subzone 70M, General Motors Corporation, Lansing, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the request submitted by the Greater Detroit Foreign Trade Zone, Inc, grantee of FTZ 70 in Detroit, Michigan and current sponsor of Subzone 70M at the General Motors Corporation (GM) facilities in Lansing, Michigan, for reissuance of the grant of authority for subzone status at the GM facilities to the Capital Region Airport Authority, grantee of FTZ 275 in Lansing, Michigan, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Capital Region Airport Authority as the grantee of the General Motors Corporation subzone, which is hereby re-designated as Subzone 275A, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, on November 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–29832 Filed 11–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1723]

Reorganization of Foreign-Trade Zone 152 Under Alternative Site Framework Burns Harbor, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Ports of Indiana, grantee of Foreign-Trade Zone 152, submitted an application to the Board (FTZ Docket 32–2010, filed 5/4/2010) for authority to reorganize under the ASF with a service area of Lake, Porter, La Porte, Newton, Jasper and Starke Counties, Indiana, adjacent to the Chicago Customs and Border Protection port of entry, and FTZ 152's existing Sites 1 through 6 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 26198, 5/11/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 152 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 and 3 through 6 if not activated by November 30, 2015.

Signed at Washington, DC, November 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–29835 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Second Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 26, 2010.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Trisha Tran, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5848 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("Department") initiated the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished ("TRBs"), from the People's Republic of China ("PRC") for the period June 1, 2008, through May 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009). On July 15, 2010, the Department published its preliminary results of the administrative review of the antidumping order on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 75 FR 41148 (July 15, 2010). On September 21, 2010, the Department published a notice extending the deadline for the final

results of the 2008–2009 administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 75 FR 57443 (September 21, 2010). The final results are currently due no later than December 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. On September 21, 2010, the Department extended the deadline of the final results by 30 days. Thus, the Department may extend the deadline of the final results by an additional 30 days.

We determine that it is not practicable to complete the final results of this review within the current deadline because the Department continues to require additional time to analyze: (a) Issues raised in recent surrogate value submissions; and (b) the arguments in the case and rebuttal briefs concerning surrogate valuation, scope issues, and issues concerning the margin calculations for the respondents. Therefore, given the complexity of issues in this case, we are extending the time limit for completion of the final results by an additional 30 days, in accordance with section 751(a)(3)(A) of the Act. An extension of 30 days from the current deadline of December 12, 2010, would result in a new deadline of January 11, 2011. As such, the final results are now due no later than January 11, 2011.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: November 18, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29862 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 10115567–0567–01]

Solicitation of Applications for the Planning and Local Technical Assistance Programs

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: Pursuant to the Public Works and Economic Development Act of 1965, as amended, EDA announces general policies and application procedures for grant-based investments under the Planning and Local Technical Assistance Programs. These programs will help communities develop the planning and technical expertise to support communities and regions in their comprehensive, entrepreneurial, and innovation-based economic development efforts. Resulting in increased private investment and higher-skill, higher-wage jobs in areas experiencing substantial and persistent economic distress, these programs are designed to enhance the competitiveness of regions. Applicants are advised to read carefully the federal funding opportunity (FFO) announcement for this notice and request for applications. For a copy of the FFO announcement, please see the Web sites listed below under "Electronic Access."

DATES: Applications are accepted on a continuing basis and processed as received. As described below under "APPLICATION SUBMISSION REQUIREMENTS" and in section V of the FFO announcement, applications may be submitted electronically via *http://www.grants.gov.* Applications also may be delivered via hand delivery, postal mail or courier service in paper (hard copy) format to the applicable EDA regional office listed below under "Contact Information for EDA's Regional Offices."

Application Submission Requirements: The applicant may obtain the application package electronically at *http://www.grants.gov.* All components of the application package may be accessed and downloaded (in a screen-fillable format) at *http://www.grants.gov/applicants/apply_for_grants.jsp.* The preferred electronic file format for attachments is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel. The applicant must complete the *http://www.grants.gov* registration process in order to submit an application through *http://www.grants.gov;* however, please note that registration is not required for an applicant to access, view, or download the application.

Alternatively, an applicant eligible for assistance under this notice may request a paper (hard copy) application package by contacting the applicable EDA regional office listed below under "Contact Information for EDA's Regional Offices."

Under this notice, EDA's regional offices will accept applications on an ongoing basis. An application received after the date of this notice will be processed in accordance with the requirements set forth herein until the next annual FFO for EDA's Planning and Local Technical Assistance Programs is posted on *http://www.grants.gov* and the related notice and request for applications is published in the **Federal Register**. The content of applications is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile or e-mail transmissions of applications.

Please note that all applicants, whether choosing to apply electronically via *http://www.grants.gov* or submit a paper (hardcopy) application, must apply for and maintain a current Central Contractor Registration (CCR) database registration. *See* section VII.C of the FFO announcement.

Electronic Submissions: Please read carefully section V.D.1 of the FFO to ensure your application is received by EDA and for specific *http://www.grants.gov* submission procedures. EDA strongly encourages electronic submissions of applications through *http://www.grants.gov.* Applications must be successfully validated and time-stamped by *http://www.grants.gov. In order to submit an application through http://www.grants.gov, an applicant first must register for a http://www.grants.gov user ID and password. This process can take between three to five business days or as long as four weeks if all steps are not completed correctly.* EDA strongly recommends that applicants register, review the application instructions, and apply as early as possible. Information about the registration process can be found at *http://grants.gov/applicants/organization_registration.jsp.*

Applicants must register as organizations, not as individuals. As part of the registration process, you will register at least one Authorized Organizational Representative (AOR) for

your organization. AORs registered at *http://www.grants.gov* are the only officials with the authority to submit applications at *http://www.grants.gov,* so please ensure that your organization's application is submitted by an AOR. If the application is submitted by anyone other than your organization's AOR, it will be rejected by the *http://www.grants.gov* system and cannot be considered by EDA. Note that a given organization may designate multiple individuals as AORs for *http://www.grants.gov* purposes.

Applicants should save and print written proof of an electronic submission made at *http://www.grants.gov.* If problems occur, the applicant is advised to (1) print any error message received, and (2) call the *http://www.grants.gov.* Contact Center at 1–800–518–4726 for assistance. The following link lists useful resources: *http://www.grants.gov/help/help.jsp.* Also, the following link lists frequently asked questions (FAQs): *http://www.grants.gov/applicants/resources.jsp#faqs.* If you do not find an answer to your question under the "Applicant FAQs," try consulting the "Applicant User Guide" or contacting *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726.

Paper Submissions: An applicant may submit a completed paper (hard copy) application via hand delivery, postal mail or courier service to the applicable regional office listed below under "Contact Information for EDA's Regional Offices."

Paper (hard copy) submissions must include one original and two copies of the complete application package submitted via hand delivery, postal mail or courier service to the applicable regional office, unless otherwise directed by EDA staff. DOC mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Therefore, applicants that choose to submit paper submissions are advised to use guaranteed overnight delivery services.

Contact Information for EDA's Regional Offices:

Applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, may submit paper submissions to: Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308, Telephone: (404) 730–3002, Fax: (404) 730–3025.

Applicants in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, may submit paper submissions to: Economic Development Administration, Austin Regional Office, 504 Lavaca, Suite 1100, Austin, Texas 78701–2858, Telephone: (512) 381–8144, Fax: (512) 381–8177.

Applicants in Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, and Muscatine and Scott counties, Iowa, may submit paper submissions to: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575.

Applicants in Colorado, Iowa (excluding Muscatine and Scott counties), Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming, may submit paper submissions to: Economic Development Administration, Denver Regional Office, 410 17th Street, Suite 250, Denver, Colorado 80202, Telephone: (303) 844–4714, Fax: (303) 844–3968.

Applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia, and West Virginia, may submit paper submissions to: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–4603, Fax: (215) 597–1063.

Applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, the Republic of Marshall Islands, the Federated States of Micronesia, Nevada, the Commonwealth of Northern Marianas Islands, Oregon, Republic of Palau, and Washington, may submit paper submissions to: Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669.

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the FFO announcement, contact the appropriate EDA regional office listed above.

SUPPLEMENTARY INFORMATION:

Program Information: EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In implementing this mission pursuant to the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA), EDA advances economic growth by assisting communities and regions experiencing chronic high unemployment and low per capita income to create an environment that fosters innovation, promotes entrepreneurship, and attracts increased private capital investment.

Under this notice and request for applications, EDA solicits applications for the Planning and Local Technical Assistance Programs authorized under PWEDA. EDA published a separate FFO dated October 14, 2010, for its Public Works, Economic Adjustment Assistance, and Global Climate Change Mitigation Incentive Fund (GCCMIF) Programs, which can be accessed on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/FFON.xml.* EDA's Web site at *http://www.eda.gov* provides additional information on EDA and its programs.

EDA expects to post separate FFO announcements at *http://www.grants.gov* and at *http://www.eda.gov* that will set forth the specific funding priorities, application and selection processes, time frames, and evaluation criteria for the FY 2011 University Center Economic Development Program competition and for certain National Technical Assistance and Research and Evaluation projects to be funded with FY 2011 appropriations.

Electronic Access: The FFO announcement for the FY 2011 competitive solicitation for EDA's Planning and Local Technical Assistance Programs is available at *http://www.grants.gov* and at *http://www.eda.gov.*

Funding Availability: As of November 26, 2010, the full amount of FY 2011 appropriations is not available and EDA is operating under the authority of the FY 2011 Continuing Resolution (Pub. L. No. 111–242, 124 Stat. 2607, September 30, 2010). The FY 2010 median award amounts are provided only for your information. The continuing resolution allocates funding based on FY 2010 funding levels, but on a pro-rated basis, until the enactment of the FY 2011 appropriations. Assuming EDA receives FY 2011 appropriations of approximately the same level as in FY 2010, the following information may prove useful for planning purposes.

In FY 2010, funding appropriated under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, 123 Stat. 3034 at 3114 (2009)) made $255,000,000 available for the economic development assistance programs authorized under PWEDA: Public Works and Economic Development Facilities Program; Economic Adjustment Assistance; GCCMIF; Planning; Local Technical Assistance; University Center Economic

Development Program; and Research and National Technical Assistance. EDA expects funding levels for FY 2011 to be similar to FY 2010; however the final amounts will not be known until Congress passes the FY 2011 appropriations. When the full FY 2011 appropriations become available, EDA will publish a **Federal Register** notice to announce the final FY 2011 funding levels for the Planning and Local Technical Assistance Programs. The funding periods and funding amounts referenced in this notice are subject to the availability of funds at the time of award, as well as to Department of Commerce (DOC) and EDA priorities at the time of award. DOC and EDA will not be held responsible for application preparation and submission costs. Publication of this notice does not obligate DOC or EDA to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

The following subsections provide more information on the two programs to which this notice applies. As noted above, specific FY 2011 funding amounts for each program will be announced separately upon availability. Please note that the approximations provided below are for informational purposes only and are not intended to restrict future awards.

1. *Planning Program: (CFDA No. 11.302; 13 CFR part 303):*

EDA's Planning Program is one of six economic development assistance programs the agency operates under PWEDA. Under this program, EDA provides assistance to eligible recipients to create regional economic development plans in order to stimulate and guide the economic development efforts of a community or region. As part of this program, EDA supports Partnership Planning investments to facilitate the development, implementation, revision, or replacement of comprehensive economic development strategies (CEDS). EDA provides Partnership Planning grants to the designated planning organization (e.g., District Organization) serving EDA-designated Economic Development Districts (as defined in 13 CFR 300.3) throughout the Nation. These planning organizations are typically recognized by the State in which they reside as multi-jurisdictional councils of governments, regional commissions, or planning and development centers. Information on the Economic Development Districts may be found on EDA's Web site at *http://www.eda.gov/PDF/EDD%20List_030410.pdf.* Planning Partnership grants enable planning organizations to manage and coordinate the development and implementation of CEDS to address the unique needs of their respective regions. In addition, EDA provides Partnership Planning grants to Indian Tribes to help organize and assist with the implementation of economic development activities within their areas. The majority of funding under the Planning Program is for Partnership Planning grants for Indian Tribes and EDA-designated Economic Development Districts.

The Planning Program also helps support planning organizations, including District Organizations and Indian Tribes, with Short-Term Planning and State Planning investments designed to create and retain higher-skill, higher-wage jobs, particularly for the unemployed and underemployed in the Nation's most economically distressed regions. For example, EDA might provide Short-Term Planning funding to a coalition of Tribal and regional organizations to plan a coordinated response to the sudden loss of a major employer in the affected area(s).

To provide investment assistance for CEDS and State plans as well as for Short-Term Planning activities, EDA allocated $31,000,000 in FY 2010 for its Planning Program. Of this amount, $28,597,033 was allocated for Partnership Planning awards that support the existing network of Economic Development Districts and $2,402,967 for Short-Term Planning projects. The median annual grant amount for a Partnership Planning award in FY 2010 was $61,000. The median annual grant amount for a Short-Term Planning award in FY 2010 was $65,000.

As in FY 2010, EDA expects that the majority of FY 2011 Planning Program funds will be used to provide support to existing planning organizations, including District Organizations and Indian Tribes. Specifically, EDA anticipates funding 375 District Organizations (in connection with their respective Economic Development Districts) and 58 Indian Tribes. Some regional offices may offer three-year funding to their planning organizations, while others may offer annually funding.

2. *Local Technical Assistance (CFDA No. 11.303; 13 CFR part 306, subpart A):*

The Local Technical Assistance Program helps eligible recipients fill the knowledge and information gaps that may prevent leaders in the public and nonprofit sectors in economically distressed regions from making optimal decisions on local economic development issues. For example, EDA might provide funds to help a city prepare a feasibility study regarding the use of an abandoned manufacturing facility for an activity that advances local economic development.

In FY 2010, EDA allocated $1,362,592 to the Local Technical Assistance Program, thereby allocating approximately $227,099 to each of EDA's six regional offices. The median size of a Local Technical Assistance grant made in FY 2010 was $50,000.

Funding Instrument and Project Periods: Subject to the availability of funds, EDA may enter into a grant with an eligible applicant in order to provide funding for eligible activities under this notice. Project periods are dependent on the project scope of work, the nature of the project and the EDA program under which the grant is awarded. In general, a Planning or Local Technical Assistance investment may allow for one to three years for completion of the scope of work. EDA expects that all projects will proceed expeditiously and encourages investments with demonstrated capacity to be implemented quickly and effectively, accelerating positive economic impacts.

Statutory Authorities: The statutory authorities for the Planning and Local Technical Assistance Programs are sections 203 (42 U.S.C. 3143) and 207 (42 U.S.C. 3147) of PWEDA, respectively. Unless otherwise provided in this notice, applicant eligibility, program objectives and priorities, application procedures, evaluation criteria, selection procedures, and other requirements for the Planning and Local Technical Assistance Programs are set forth in EDA's regulations (codified at 13 CFR chapter III), and the application must comply with these requirements. EDA's regulations and PWEDA are available at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Catalog of Federal Domestic Assistance (CFDA) Numbers: 11.302, Economic Development—Support for Planning Organizations; 11.303, Economic Development—Technical Assistance.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include: (1) District Organizations; (2) Indian Tribes or a consortium of Indian Tribes; (3) States, cities or other political subdivisions of a State, including special purpose units of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (4) institutions of higher education or a consortium of institutions of higher education; or (5) public or private non-profit

organizations or associations acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

EDA is not authorized to provide grants directly to individuals or to for-profit entities seeking to start or expand a private business. Such requests may be referred to State or local agencies, or to non-profit economic development organizations serving the region in which the project will be located.

Economic Distress Criteria: Awards under EDA's Planning and Local Technical Assistance Programs should be designed to have positive economic development impacts within distressed regions and help communities ensure resilient economies. Applicants are responsible for defining the region that the project will assist by providing supporting statistics and other information, as appropriate. Planning awards under section 203 of PWEDA (42 U.S.C. 3143) and 13 CFR part 303 are designed to support planning organizations in developing, implementing, revising or replacing CEDS, and help to create and retain higher-skill, higher-wage jobs, particularly for the unemployed and underemployed in the Nation's most economically distressed regions. *See also* 13 CFR 303.1. Local Technical Assistance awards may help eligible recipients determine the causes of excessive unemployment, underemployment, low per capita income or outmigration; formulate and implement economic development programs to increase local or regional capacity; or conduct project planning and feasibility studies. *See also* 13 CFR 306.1. Although meeting specific distress criteria is not a prerequisite for funding under the two programs, the economic distress level of the region impacted by a project serves as the basis for establishing the EDA share of the total cost of a project.

Cost Sharing or Matching Share Requirement: Generally, the amount of the EDA grant may not exceed 50 percent of the total cost of the project. Projects may receive an additional amount that shall not exceed 30 percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). For planning assistance, the minimum EDA investment rate for projects under 13 CFR part 303 is 50 percent, and the maximum allowable EDA investment rate may not exceed 80 percent. *See* 13 CFR 301.4(b)(3). As specified in section 204(c)(3) of PWEDA (42 U.S.C. 3144) for projects under 13 CFR part 306, the Assistant Secretary of Commerce for Economic Development (Assistant Secretary) has the discretion to establish a maximum EDA investment rate of up to 100 percent where the project (1) merits, and is not otherwise feasible without, an increase to the EDA investment rate; or (2) will be of no or only incidental benefit to the recipient. *See* 13 CFR 301.4(b)(4).

The Assistant Secretary has the discretion to establish a maximum EDA investment rate of up to 100 percent of the total project cost for EDA investment assistance awarded to a(n): (1) Indian Tribe, (2) State (or political subdivision of a State) that the Assistant Secretary determines has exhausted its effective taxing and borrowing capacity, or (3) non-profit organization that the Assistant Secretary determines has exhausted its effective borrowing capacity. *See* sections 204(c)(1) and (2) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(5). Potential applicants should contact the appropriate EDA regional office to make these determinations.

In the application review process, EDA will consider the nature of the contribution (cash or in-kind) and the amount of the matching share funds. EDA will give preference to applications that include cash contributions (over in-kind contributions) as the matching share. While cash contributions are preferred, in-kind contributions, consisting of contributions of space, equipment, or services, or forgiveness or assumptions of debt, may provide the required non-Federal share of total project costs. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. Funds from other Federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the full project period, will be available as needed and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Restrictions on the Use of EDA Funds: Specific regulations, administrative requirements, and cost principles govern the use of EDA funds. The general and administrative requirements for EDA awards are set forth in 13 CFR parts 300–302. Specific application and award requirements for the Planning and Local Technical Assistance Programs are provided in 13 CFR part 303 and subpart A of 13 CFR part 306, respectively. EDA funds may not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance pursuant to this notice. *See* 13 CFR 302.10.

The uniform administrative requirements for DOC grants and cooperative agreements are codified at 15 CFR parts 14 and 24, as applicable. For EDA's purposes, 15 CFR part 14 governs awards made to institutions of higher education and non-profit organizations, and 15 CFR part 24 governs awards made to States and local governments. Funds awarded cannot necessarily pay for all the costs that a recipient may incur in the course of carrying out a project. See section III.D of the FFO announcement for more information regarding allowable costs under an award and EDA's nonrelocation policy. Applicable administrative requirements and Federal cost principles are incorporated by reference into the terms and conditions of each EDA award.

Application Package Required Forms: The applicant is advised to read carefully the instructions contained in this FFO and in all forms contained in the application package. *It is the sole responsibility of the applicant to ensure that a complete application package is received by EDA.*

The applicant must complete and submit the *Application for Investment Assistance* (Form ED–900), and additional Federal grant assistance forms listed below as part of a complete application package. The following forms are required for a complete application package:

1. Form ED–900 (*Application for Investment Assistance*). One form per project is required.
2. One Form SF–424 (*Application for Federal Assistance*) from *each* co-applicant, as applicable.
3. Form SF–424A (*Budget Information—Non-Construction Programs*). One form per project is required.
4. One Form SF–424B (*Assurances—Non-Construction Programs*) from *each* co-applicant, as applicable.
5. One Form CD–511 (*Certification Regarding Lobbying*) from *each* co-applicant, as applicable.

In addition, applicants may be required to provide certain lobbying information using Form SF–LLL (*Disclosure of Lobbying Activities*) and to submit to a background screening using Form CD–346. Form ED–900 provides detailed guidance to help the applicant assess whether Form SF–LLL

is required and how to access it. Please note that, if applicable, one Form SF–LLL must be submitted for each co-applicant that has used or plans to use non-federal funds for lobbying in connection with this notice and request for applications. All key individuals of non-profit applicants and applicants that are first-time recipients of EDA or DOC funding are required to provide required individual background screening forms (Form CD–346) for a complete application, but please note that EDA may require other applicants to submit Form CD–346 to comply with DOC requirements. EDA will inform applicants if this is required. Form CD–346 may be accessed at *http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/dev01_002454.pdf.*

Instructions for Completing Form ED–900: Form ED–900 is divided into lettered sections that correspond to specific EDA program components that address EDA's statutory and regulatory requirements. The form details the sections and exhibits that must be completed based on program type. Because this notice seeks Planning and Local Technical Assistance applications only, an applicant needs to complete those sections of Form ED–900 identified in the table below. Complete instructions are included within Form ED–900.

EDA Program	Required Form ED–900 Sections
Partnership Planning	Complete Sections A, C, E, and F and Exhibit C.
Short-Term Planning	Complete Sections A, C, E, and G and Exhibit C.
State Planning	Complete Sections A, C, E, G, and H and Exhibit C.
Local Technical Assistance	Complete Sections A, C, E, and I and Exhibit C.

To limit the burden on the applicant, EDA may request additional documentation only if EDA determines that the applicant's project merits further consideration. The Form ED–900 provides detailed guidance on documentation, information, and other materials that will be requested if, and only if, EDA selects the project for further consideration. EDA will timely inform the applicant if its application has been selected for further consideration or if the application has not been selected for funding.

Intergovernmental Review: Applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, "*Intergovernmental Review of Federal Programs.*"

Evaluation and Selection Procedures: Application packages submitted under this notice for the Short-Term Planning and Local Technical Assistance Programs will be circulated by a project officer within the applicable EDA regional office for review. After the necessary input and information are obtained, the application is considered by the regional office's Investment Review Committee (IRC), which is comprised of at least three members of regional office staff. The IRC discusses the application (1) using the evaluation criteria set out below under "Evaluation Criteria" and in section IV.A of the FFO announcement; and (2) to determine if it meets the program-specific award and application requirements provided in 13 CFR 303.3 for Planning awards and 13 CFR 306.2 for Local Technical Assistance awards, as applicable.

Evaluation Criteria: For EDA's discretionary grant programs under this notice, namely, Short-Term Planning and Local Technical Assistance, EDA will evaluate applications based on their ability to satisfy the investment policy guidelines identified in this section, with each criterion assigned the weight indicated. These evaluation criteria may be found on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/InvestmentPriorities.xml*, and applicants are encouraged to review these priorities as they develop their projects.

1. *National Strategic Priorities* (30%)

EDA seeks to fund applications that encourage job growth and business expansion, as well as promoting one or more of the following initiatives:

- Technology-led economic development,
- Support to small- and medium-sized businesses,
- Global competitiveness and innovation,
- Responses to economic dislocation because of auto industry restructuring or natural disasters,
- Commercialization of research, and/or
- Environmentally sustainable development.

2. *Economically Distressed and Underserved Communities* (25%)

EDA seeks to fund applications that strengthen communities that have suffered disproportionate economic and job losses or long-term severe economic distress, and/or are rebuilding to become more competitive in the global economy.

3. *Return on Investment* (25%)

EDA seeks to fund applications that demonstrate a high return on EDA's investment by demonstrating that the project will be likely to stimulate economic development by demonstrating a high probability of leading to actionable projects or identifying specific benchmarks that will measure progress towards outputs.

4. *Collaborative Regional Innovation* (10%)

EDA seeks to fund applications that support the development and growth of innovation clusters based on existing regional competitive strengths, which may be demonstrated by the extent to which an investment will:

- Promote collaboration among multi-jurisdictional leadership,
- Link and leverage regional assets, and
- Implement or build upon effective planning efforts.

5. *Public/Private Partnerships* (10%)

EDA seeks to fund applications that use public and private sector resources, and/or leverage complementary investments by other government/public entities and/or non-profits.

Selection Factors: The IRC recommends to the Regional Director whether an application merits further consideration, documenting its recommendation. For quality control assurance, EDA Headquarters reviews the IRC's analysis of the project's ability to fulfill the investment policy guidelines set out above under "Evaluation Criteria." After receiving quality control clearance, the Selecting Official, who is the Regional Director, considers the evaluations provided by the IRC and also takes into account the degree to which the applications are responsive to one or more of the selection factors provided below when deciding which applications to fund.

1. A determination that the application better meets the overall

objectives of section 2 of PWEDA (42 U.S.C. 3121);

2. Relative economic distress of the applicant;

3. Financial or management capability of the applicant;

4. Availability of program funding;

5. Geographic balance in distribution of program funds;

6. Balance of diverse project types in the distribution of program funds;

7. Balanced funding for a diverse group of organizations, to include smaller and rural organizations, which may form part of a broader consortium to serve diverse populations and areas within the regional office's territory;

8. The applicant's performance under previous Federal financial assistance awards;

9. A determination that a project is more likely to create jobs in a shorter timeframe; or

10. Whether the project will enable BRAC-impacted communities to transition from a military to civilian economy and otherwise respond to economic impacts.

The Regional Director's final decision must be consistent with EDA's and the U.S. Department of Commerce's policies. Any time the Regional Director makes a selection that differs from the IRC's recommendations, the Regional Director will document the rationale for the decision in writing.

Notification to Applicants: Applicants for Short-Term Planning assistance or Local Technical Assistance will be notified if their applications are recommended for funding. For Economic Development District Partnership Planning applicants, EDA will continue to handle the award process in accord with current practice. Potential Economic Development District Partnership Planning applicants should contact the applicable EDA regional office for instructions.

If an application is selected for funding and the applicant successfully completes all due diligence requirements, the EDA Grants Officer will issue the grant award (Form CD–450), which is the authorizing financial assistance award document. By signing Form CD–450, the recipient agrees to comply with all award provisions. EDA will provide Form CD–450 by mail or overnight delivery to the appropriate business office of the recipient's organization. The recipient must sign and return the Form CD–450 without modification within 30 days of receipt.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* published in the **Federal Register** on February 11, 2008 (73 FR 7696), are applicable to this notice.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), SF–424D (*Assurances—Construction Programs*), and Form SF–LLL (*Disclosure of Lobbying Activities*) has been approved under OMB Control Numbers 4040–0004, 0348–0044, 4040–0007, 4040–0008, 4040–0009, and 0348–0046 respectively. The Form CD–346 (*Applicant for Funding Assistance*) is approved under OMB Control Number 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: November 19, 2010.

Brian P. McGowan,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2010–29744 Filed 11–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ98

Taking of Marine Mammals Incidental to Specified Activities; U.S. Marine Corps Training Exercises at Air Station Cherry Point

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Marine Corps (USMC) to take marine mammals, by Level B harassment only, incidental to military training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina. The USMC's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004.

DATES: Effective December 1, 2010–November 30, 2011.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The following associated documents are also available at the same internet address: *Environmental Assessment MCAS Cherry Point Range Operations* (USMC 2009) and the associated Finding of No Significant Impact (FONSI). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The NDAA (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On August 6, 2009, NMFS received an application from the USMC requesting an IHA for the take, by harassment only, of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to air-to-surface and surface-to-surface training exercises conducted around two bombing targets (BTs) within southern Pamlico Sound, North Carolina, at MCAS Cherry Point. In summary, weapon delivery training will occur at two BTs: Brant Island Target (BT–9) and Piney Island Bombing Range (BT–11). Training at BT–9 will involve air-to-surface (from aircraft to in-water targets) and surface-to-surface (from vessels to in-water targets) warfare training, including bombing, strafing, special (laser systems) weapons; surface fires using non-explosive and explosive ordnance; and mine laying exercises (inert). Training at BT–11 will involve air-to-surface exercises to provide training in the delivery of conventional (non-explosive) and special (laser systems) weapons. Surface-to-surface training by small (*i.e.,* 24–85 ft) military watercraft will also be executed here. The types of ordnances proposed for use at BT–9 and BT–11 include small arms, large arms, bombs, rockets, missiles, and pyrotechnics. All munitions used at BT–11 are inert practice rounds. No live firing occurs at BT–11. Training for any activity may occur year-round, day or night. Active sonar is not a component of these specified training exercises; therefore, no harassment from active sonar is covered by the IHA.

Description of the Specified Activity

All inert and live-fire exercises at MCAS Cherry Point are conducted so that all ammunition and other ordnances strike and/or fall on the land or water based target or within the existing danger zones or water restricted areas. The BTs are located at the convergence of the Neuse River and Pamlico Sound, North Carolina. Military training activities at the BTs include gunnery; mine laying; bombing; or rocket exercises and are classified into two categories here based on delivery method: (1) Surface-to-surface gunnery and (2) air-to-surface bombing. Exercises may occur year round, day or night (less than 15 percent of training occurs at night).

Surface-to-surface fires are fires from boats at sea to targets at sea. These can be direct (targets are within sight) or indirect (targets are not within sight). Gunnery exercise employing direct fire is the only category of surface-to-surface activity currently conducted within MCAS Cherry Point. There are four types of air-to-surface activities conducted within the MCAS Cherry Point BTs: Inert mine laying; bombing; gunnery; and rocket exercises which are carried out via fixed wing or rotary wing aircraft. High explosive ordnance is used only at BT–9. Based on 2007 data, the USMC would conduct approximately 1,539 aircraft-based and 165 vessel-based sorties, annually, at BT–9 and approximately 6,727 aircraft-based and 51 vessel-based sorties, annually, at BT–11. The standard sortie consists of two aircraft per bombing run or an average of two and maximum of six vessels. A complete description of these military readiness activities, including the type and amount of ammunition used during training, is available in the proposed **Federal Register** notice for this action (75 FR 32398; June 8, 2010).

Description of Marine Mammals in the Area of the Specified Activity

Only one marine mammal species, the bottlenose dolphin, occurs within Pamlico Sound around the BTs. The endangered West Indian manatee (*Trichechus manatus*) has been sighted rarely (Lefebvre *et al.,* 2001; DoN, 2003) within Pamlico Sound; however, the U.S. Fish and Wildlife Service oversees management of this species. Therefore, authorization to harass West Indian manatees is not included in any NMFS' authorization and will not be discussed further.

Four out of seven designated coastal stocks of the Atlantic bottlenose dolphin may occur in North Carolina waters at some part of the year: The Northern Migratory stock (NM; winter); the Southern Migratory stock (SM; winter); the Northern North Carolina Estuarine stock (NNCE; resident, year round); and the more recently identified Southern North Carolina stock (SNC; resident, year round). Dolphins encountered at the BTs likely belong to the NNCE and SNC stock; however, this may not always be the case. NMFS' 2008 stock assessment report provides further detail on stock delineation. All stocks discussed here are considered Depleted under the MMPA (Waring *et al.,* 2007).

In Pamlico Sound, bottlenose dolphins concentrate in shallow water habitats along shorelines, and few, if any, individuals are present in the central portions of the sounds (Gannon, 2003; Read *et al.,* 2003a, 2003b). Fine-scale dolphin abundance and density studies have been conducted in Pamlico Sound via aerial and boat based surveys (Read *et al.,* 2003; Mayer, 2003; Goodman *et al.,* 2007). Read *et al.* (2007) also conducted passive acoustic monitoring to determine dolphin

presence around the BTs. The survey resulted in varying abundance and density estimates; however, in general, abundance was higher in summer than winter, density estimates ranged from 0.09 to 0.18 dolphins/km^2, and abundance around BT–11 was greater than BT–9. A complete description of bottlenose dolphin biology and ecology within Pamlico Sound can be found in the proposed IHA **Federal Register** notice prepared for this action (75 FR 32398; June 8, 2010).

Effects on Marine Mammals

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines "harassment" as:

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

The USMC and NMFS have determined that harassment to marine mammals (specifically, bottlenose dolphins) may occur incidental to noise and detonations related to munitions firing on the BTs. These military readiness activities will result in increased noise levels, explosions, and munition debris within bottlenose dolphin habitat. In the absence of planned mitigation and monitoring measures, it is possible that injury or mortality of bottlenose dolphins could occur; however, due to the implementation of the planned measures, NMFS does not anticipate that harassment would rise to the level of injury (Level A harassment) or mortality. Therefore, the IHA solely authorizes Level B (behavioral) harassment incidental to the USMC's training activities. NMFS anticipates that bottlenose dolphins may undergo temporary threshold shift, masking, stress response, and altered behavioral patterns (*e.g.,* traveling, resting, opportunistic foraging). A complete description of these impacts is available in the proposed IHA **Federal Register** notice prepared for this action (75 FR 32398, June 8, 2010).

Effects on Marine Mammal Habitat

Detonations of live ordnance will result in temporary modification to physical water properties. Munitions are designed to hit the targets and not explode in-water; however, because the targets are on the water (*e.g.,* ship hull on shoals); in-water explosions may occur. Such explosions will result in the release of gaseous by-products and creation of oscillating bubbles. Should a high-explosive miss the target and explode in-water, a small water plume may erupt. However, these impacts will be temporary and not expected to last more than a few seconds. Any direct hit on the targets are not expected to cause the aforementioned effects as the target would absorb the impact.

Similarly, no long term impacts with regard to hazardous constituents are expected to occur. MCAS Cherry Point has an active Range Environmental Vulnerability Assessment (REVA) program in place to monitor impacts to habitat from its activities. One goal of REVA is to determine the horizontal and vertical concentration profiles of heavy metals, explosives constituents, perchlorate nutrients, and dissolved salts in the sediment and seawater surrounding BT–9 and BT–11. Results of recent sampling indicate that explosive constituents (*e.g.,* trinitrotoluene (TNT), cyclotrimethylenetrinitramine (RDX), and hexahydro-trinitro-triazine (HMX) were not detected in any sediment or water sample surrounding the BTs. Metals were not present above toxicity screening values. Perchlorate was detected in a few sediment samples above the detection limit (0.21 ppm), but below the reporting limit (0.6 ppm). The ongoing REVA would continue to evaluate potential migration of munitions constituents from operational range areas to off-range areas and MCAS Cherry Point would continue to implement mitigation measures as necessary.

In summary, in the absence of planned mitigation and monitoring measures, the potential exists for negative effects on marine mammal habitat. However, because dolphins are not expected to be in the immediate area during live firing, due to monitoring and mitigation measure implementation (discussed later in this document), they will not be subject to any short term habitat alterations caused by in-water and near-water explosions. REVA has found no significant impact on habitat from the USMC's training activities and the ongoing REVA will continue to evaluate potential migration of munitions constituents from operational range areas to off-range areas and MCAS Cherry Point would continue to implement mitigation measures as necessary. Therefore, the impacts to marine mammal habitat will be minimal.

Comments and Responses

On June 8, 2010, NMFS published in the **Federal Register** a notice of a proposed IHA for the taking of marine mammals incidental to the USMC's training exercises at MCAS Cherry Point and requested comments regarding this request (75 FR 32389). NMFS also sent the proposed IHA notice to the Marine Mammal Commission (Commission). The **Federal Register** notice also made the USMC's Environmental Assessment "*MCAS Cherry Point Range Operations*" available for public comment. During the 30-day public comment period, NMFS received comments from the Commission on the application and proposed IHA, and has evaluated and considered those comments in the course of making the necessary findings under the MMPA Section 101(a)(5)(D) as well as determining whether or not to issue a FONSI under NEPA. No additional public comment was received.

Comment 1: The Commission recommends that, before issuing the IHA, NMFS require the USMC to (1) describe in detail the environmental parameters and methods used to estimate the number of exposures and determine the safety zones; (2) justify its use of the bottlenose dolphin density found in Read *et al.* (2007) or recalculate its estimated exposures based on Maher (2003); and (3) use either direct strike or dynamic Monte Carlo models to determine the probability of ordnance strike.

Response: NMFS disagrees with the Commission's statements that the methods used by the USMC to derive safety zones, take, and estimate strike probability were lacking or inadequate. The USMC's application describes how safety zones were derived (based on NMFS explosive harassment criteria) and concluded that Level A harassment could occur at distances around 200 m (656 ft) from the target, based on a threshold of 13 psi-msec. However, the USMC will establish a "no fire" zone for a 1,000 m (3,281 ft) radius around BT–9, or anywhere within Raritan Bay at BT–11, providing a conservative approach to bottlenose dolphin safety.

The Commission recommended "direct strike or dynamic Monte Carlo methods" while admitting that the result of using a new risk probability model would likely provide negligible changes from the model described in the application. The Commission did not provide further guidance on how to calculate risk from a Monte Carlo method and, because any change would be negligible, NMFS does not agree that this alternative method of modeling is

necessary for purposes of issuing an MMPA incidental take authorization.

With respect to the Commission's comments on density estimates used in the application, as described in the proposed IHA **Federal Register** notice, various Pamlico Sound bottlenose dolphin density estimates are available based on survey season and year. To be conservative, the USMC used the highest, albeit slightly older, density estimate (0.183 dolphins/km^2) available to calculate take estimates. This estimate does not differ greatly from other density estimates (approximately 0.11 dolphin/km^2) and the USMC's conservative approach was considered acceptable by NMFS.

Comment 2: The Commission also requested that detailed mitigation, monitoring, and reporting requirements be specified in the application and that NMFS should withhold the authorization until the USMC develops and is prepared to implement a plan to evaluate the effectiveness of monitoring and mitigation measures before beginning or, at the very least, in conjunction with, conducting exercises covered by the proposed IHA.

Response: NMFS worked closely with the USMC during the application process to develop proper mitigation, monitoring, and reporting requirements designed to minimize and detect impacts from the specified activities. In order to ensure that NMFS can make the findings necessary for issuance of an IHA, NMFS worked with the USMC to develop more comprehensive and acceptable mitigation, monitoring, and reporting requirements. As a result, the USMC prepared a *Marine Mammal and Protected Species Monitoring Plan* (Plan) and additional monitoring and mitigation measures are contained within the IHA and this notice. NMFS has determined that the Plan and additional monitoring and mitigation measures are adequate to satisfy the requirements of the MMPA.

Comment 3: The Commission recommended NMFS condition the authorization, if issued, to require the suspension of the exercises if a marine mammal is seriously injured or killed and if the injury or death is associated with the exercises.

Response: NMFS's issuance of an IHA allows the applicant to take marine mammals (specifically, bottlenose dolphins) incidental to specified activities. NMFS has the authority, under the MMPA, to modify, suspend, or revoke an authorization if, among other things, the methods of taking exceed those authorized. Specific to the USMC IHA, no take by Level A harassment, injury, or death is authorized in the IHA. Furthermore, the IHA is conditioned such that, if there is evidence that a marine mammal has been stranded, injured or killed as a direct result of target operations, the USMC would immediately suspend those activities within the specific target area and re-evaluate the presence of dolphins around the specific target. The incident would be immediately reported to the USMC's Range Management Office and NMFS' Stranding Network and Office of Protected Resources.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the "permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The training activities described in the USMC's application are considered military readiness activities.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. NMFS has determined that the mitigation measures described below provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The USMC, in collaboration with NMFS, has worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the "military-readiness activity". These proposed mitigation measures are listed below. Mitigation monitoring is also described in the *Marine Mammal and Protected Species Monitoring Plan,* the specifications of which are included as conditions in the IHA. While the primary focus of monitoring for both mitigation and reporting shall be on bottlenose dolphins, personnel will also attempt to identify any other marine mammals that might be present within the exclusion zone. In the unlikely event that a marine mammal other than bottlenose dolphin is sighted within the exclusion zone or determined to have been stranded, injured or killed by target operations, then the same mitigation measure for delay of exercises (described later in this document) prescribed for bottlenose dolphins, or immediate suspension of activities, shall apply, and relevant information will be included in weekly reports and post-IHA monitoring reports.

(1) *Range Sweeps:* The VMR–1 squadron, stationed at MCAS Cherry Point, includes three specially equipped HH–46D helicopters. The primary mission of these aircraft, known by the military acronym PEDRO, is to provide search and rescue for downed 2^{d} Marine Air Wing aircrews. On-board are a pilot, co-pilot, crew chief, search and rescue swimmer, and a medical corpsman. Each crew member has received extensive training in search and rescue techniques, and is therefore particularly capable at spotting objects in the water.

PEDRO crew will conduct a range sweep the morning of each exercise day prior to the commencement of range operations. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of fishermen, other personnel, and protected species. The sweep is flown at 100–300 m (328–984 ft) above the water surface, at airspeeds between 60–100 knots. The path of the sweep runs down the western side of BT–11, circles around BT–9 and then continues down the eastern side of BT–9 before leaving. The sweep typically takes 20–30 minutes to complete. The Pedro crew is able to communicate

directly with range personnel and can provide immediate notification to range operators. The PEDRO aircraft will remain in the area of a sighting until clear if possible or as mission requirements dictate.

If a marine mammal is sighted during a range sweep, sighting data will be collected and entered into the US Marine Corps sighting database, web-interface, or report generator and this information will be relayed to the training Commander. Sighting data includes the following (collected to the extent possible): (1) Species identification; (2) group size; (3) the behavior of marine mammals (*e.g.,* milling, travel, social, foraging); (4) location and relative distance from the BT; (5) date, time and visual conditions (*e.g.,* sea state (as indicated by Beaufort Wind Force Scale), weather) associated with each observation; (6) direction of travel relative to the BT; and (7) duration of the observation.

(2) *Cold Passes:* All aircraft participating in an air-to-surface exercise will be required to perform a "cold pass" immediately prior to ordnance delivery at the BTs both day and night. That is, prior to granting a "First Pass Hot" (use of ordnance), pilots will be directed to perform a low, cold (no ordnance delivered) first pass which serves as a visual sweep of the targets prior to ordnance delivery to determine if unauthorized civilian vessels or personnel, or protected species, are present. The cold pass is conducted with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 200–3,000 ft (61–914 m) over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. The aircrew and range personnel make every attempt to ensure clearance of the area via visual inspection and remotely operated camera operations (see Proposed Monitoring and Reporting section in this document). The Range Controller may deny or approve the First Pass Hot clearance as conditions warrant.

(3) *Delay of Exercises:* An active range will be considered "fouled" and not available for use if a marine mammal is present within 1,000 yards (914 m) of the target area at BT–9 or anywhere within Rattan Bay (BT–11). Therefore, if a marine mammal is sighted within 1,000 yards of the target at BT–9 or anywhere within Rattan Bay at BT–11 during the initial range sweep, the pre-ordnance delivery cold pass, or from range camera detection (see 4, later in this document), training will be delayed until the marine mammal moves beyond the 1,000 yard radius from the BT–9 target, and is on a heading away from the safety zone, or out of Rattan Bay at BT–11. This mitigation applies to both air-to-surface and surface-to-surface exercises.

(4) *Range Camera Use:* To increase the safety of persons, property, or protected resources near the targets, Range Operation and Control personnel monitor the target area through tower mounted safety and surveillance cameras. The remotely operated range cameras are high resolution and, according to range personnel, allow a clear visual of even small objects floating near the target. A new, enhanced camera system will be installed on BT–11 towers 3 and 7, and on both towers present at BT–9. The new camera system has night vision capabilities with resolution levels near those during daytime. Lenses on the camera system have focal lengths of 40 mm to 2,200 mm (56x), with view angles of 18° 10′ and 13° 41′, respectively. The field of view when zoomed in on the Rattan Bay targets will be 23 ft (7 m) wide by 17 ft (5 m) high. When focused on the mouth of Rattan Bay, the field of view will be 87 × 66 ft (27 × 20 m).

Again, in the event that a marine mammal is sighted within 1,000 yards (914 m) of the BT–9 target, or anywhere within Rattan Bay, the target is declared fouled. Operations may commence in the fouled area after the animal(s) have moved 1,000 yards from the BT–9 target and/or out of Rattan Bay.

(4) *Vessel Operation:* All vessels used during training operations will abide by the NMFS' Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals (*http://www.nmfs.noaa.gov/pr/education/southeast/*).

(5) *Stranding Network Coordination:* The USMC shall coordinate with the local NMFS Stranding Coordinator regarding any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

(6) *Delay of Operations:* If there is evidence that a marine mammal has been stranded, injured or killed as a direct result of target operations, the USMC would immediately suspend those activities within the specific target area and re-evaluate the presence of bottlenose dolphins, or other marine mammals if necessary, around the specific target. The incident will be reported immediately to the Range Management Office and NMFS' Stranding Network and Office of Protected Resources.

NMFS specifically investigated the efficacy of these mitigation measures during nighttime operations. The USMC identified that nighttime operations occur infrequently (less than 15 percent). In 2007, 2008, and 2009, nighttime training involving high explosives occurred on 2, 10, and 0 nights, respectively. For the same years, training using inert bombs occurred on 20, 16, and 33 nights, respectively. These exercises last, on average, 2.5 hours but may last as long as 6 hours. Post-exercise training monitoring has never revealed evidence of a dolphin injury or fatality.

Regardless of the infrequency of night exercises or lack of recorded marine mammal injuries or fatalities, NMFS evaluated the efficacy of marine mammal detection during low-light and no-light conditions as training will occur during these conditions. As described above, the new camera systems installed at BT–9 and BT–11 have night-vision capabilities with resolution levels near those during daytime. In addition, pilots are outfitted with night-vision goggles which are able to detect a marine mammal breaking the water's surface. Pilots will observe the waters in line with the flight path upon approach to the target. In addition, the pre-training range sweeps and other methods designed to ensure vessels and the public are not around the BTs would be carried out and would contain a marine mammal detection component. Should a marine mammal be observed by the range camera operators, pilots or other USMC personnel within the designated "no fire" zones, the training would be delayed.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals: (a) An increase in our understanding of how many marine mammals are likely to be

exposed to munition noise and explosions that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS; (b) an increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to gunnery and bombing exercises (at specific received levels) expected to result in take; (c) an increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival); (d) an increased knowledge of the affected species; (e) an increase in our understanding of the effectiveness of certain mitigation and monitoring measures; (f) a better understanding and record of the manner in which the authorized entity complies with the incidental take authorization; and (g) an increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general.

The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals expected to be present within the action area are as follows:

(1) *Protected Species Observer Training:* Operators of small boats and other personnel monitoring for marine mammals from watercraft shall be required to take the Marine Species Awareness Training (Version 2), maintained and promoted by the Department of the Navy. Pilots conducting Range Sweeps shall be instructed on marine mammal observation techniques during routine Range Management Department briefings. This training will make personnel knowledgeable about marine mammals and other protected species, and visual cues related to the presence of marine mammals and protected species.

(2) *Weekly and Post-Exercise Monitoring:* Post-exercise monitoring shall be conducted the morning following an exercise, unless an exercise occurs on a Friday, in which case the post-exercise sweep would take place the following Monday. Weekly monitoring events will include a maximum of five pre-exercise and four post-exercise sweeps. The maximum number of days that will elapse between pre- and post-exercise monitoring events will be approximately three days, which would occur only on weekends. If marine mammals are observed during this monitoring, sighting data identical to those collected by PEDRO crew will be recorded and logged. Monitoring is described in greater detail in the *Marine Mammal and Protected Species Monitoring Plan.*

(3) *Long-term Monitoring:* The USMC has awarded the Duke University Marine Lab (DUML) duties to obtain abundance, group dynamics (*e.g.,* group size, age census), behavior, habitat use, and acoustic data on the bottlenose dolphins that inhabit Pamlico Sound, specifically those around BT–9 and BT–11. DUML began conducting boat-based surveys and passive acoustic monitoring of bottlenose dolphins in Pamlico Sound in 2000 (Read *et al.,* 2003) and specifically at BT–9 and BT–11 in 2003 (Mayer, 2003). To date, boat-based surveys indicate that bottlenose dolphins may be resident to Pamlico Sound and use BT restricted areas on a frequent basis. Passive acoustic monitoring (PAM) is providing more detailed insight into how dolphins use the two ranges by monitoring for their vocalizations year-round, regardless of weather conditions or darkness. In addition to these surveys, DUML scientists are testing a real-time PAM system at BT–9 that will allow automated detection of bottlenose dolphin whistles, providing another method of detecting dolphins prior to training operations. Although it is unlikely this PAM system will be active for purposes of implementing mitigation measures before an exercise prior to expiration of the proposed IHA, it will be operational for future MMPA incidental take authorizations.

(4) *Reporting:* The USMC will submit a report to NMFS within 90 days after expiration of the IHA or, if a subsequent incidental take authorization is requested, within 120 days prior to expiration of the IHA. The report will summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report will also address the effectiveness of the monitoring plan in detecting marine mammals.

Estimated Take by Incidental Harassment

The following provides the USMC's model for take of dolphins from explosives (without consideration of mitigation and with the conservative assumption that all explosives will land in the water and not on the targets or land) and potential for direct hits and NMFS' analysis of potential harassment from small vessel and aircraft operations.

The method to estimate the number of marine mammals potentially taken by the specified activities is based on dolphin density, the amount and type of ordnance proposed, and distances to NMFS' harassment threshold criteria. The acoustic criteria for underwater detonations are comprehensively explained in NMFS' proposed IHA **Federal Register** notice for this action (75 FR 32398, June 8, 2010) and consider hearing and physiological damage and behavioral harassment for single and multiple explosions (Table 1).

TABLE 1—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological.	50 percent Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re: 1 microPa^2 = sec).	Level A.
Injurious Physiological.	Onset Slight Lung Injury.	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any 1/3-octave band (>100 Hz for toothed whales and >10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2 = sec	Level B.

TABLE 1—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS—Continued

Effect	Criteria	Metric	Threshold	Effect
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral.	Multiple Explosions Without TTS.	Greatest energy flux density level in any 1/3-octave (>100 Hz for toothed whales and >10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2 = sec	Level B.

To calculate take, the distances to which animals may be harassed were considered along with dolphin density. The density estimate from Read *et al.* (2003) was used to calculate take from munitions firing (0.183/km^2). Take calculations for munitions firing are based on 100 percent water detonation (though the goal of training is to hit the targets), and do not consider pre-exercise monitoring or mitigation. Therefore, take estimates can be considered conservative.

Based on dolphin density and amount of munitions expended, there is very low potential for Level A harassment or mortality and monitoring and mitigation measures are anticipated to further negate this potential. Accordingly, NMFS is not authorizing these levels of take. In total, from firing of explosive ordnances, the USMC is requesting, and NMFS is proposing to issue, the incidental take of 25 bottlenose dolphins from Level B harassment (Table 2). This take estimation is described in greater detail in the **Federal Register** proposed IHA notice (75 FR 32389, June 8, 2010).

TABLE 2—NUMBER OF DOLPHINS POTENTIALLY TAKEN FROM EXPOSURE TO EXPLOSIVES BASED ON THRESHOLD CRITERIA

Ordnance type	Level B—Behavioral (177dB re 1microPa^2 = s)	Level B—TTS (23 psi)	Level A—Injurious (205 dB re 1microPa^2 = s or 13 psi)	Mortality (30.5 psi)
2.75″ Rocket HE	N/A	4.97	0.17	0.06
5″ Rocket HE	N/A	3.39	0.09	0.03
30mm HE	2.55	N/A	0.05	0.00
40mm HE	12.60	N/A	0.16	0.01
G911 Grenade	N/A	0.87	0.03	0.01
Total	15.15	9.23	0.5	0.11

As described in the proposed IHA **Federal Register** notice for this action, the USMC and NMFS have determined that the chance of take from direct hit and vessel operation is discountable. The probability of hitting a bottlenose dolphin at the BTs can be derived as follows: Probability = dolphin's dorsal surface area * density of dolphins. The estimated dorsal surface area of a bottlenose dolphin is 1.425 m^2 (or the average length of 2.85 m times the average body width of 0.5 m). Thus, using Read *et al.* (2003)'s density estimate of 0.183 dolphins/km^2, without consideration of mitigation and monitoring implementation, the probability of a dolphin being hit in the waters of BT–9 is 2.61×10^{-7} and of BT–11 is $9.4 \times {}^{-8}$. Using the proposed levels of ordnance expenditures at each in-water BT (Tables 4 and 5) and taking into account that only 36 percent of the ordnance deployed at BT–11 is over water, as described in the application, the estimated potential number of ordnance strikes on a marine mammal per year is 0.263 at BT–9 and 0.034 at BT–11. It will take approximately three years of ordnance deployment at the BTs before it will be likely or probable that one bottlenose dolphin will be struck by deployed inert ordnance. Again, these estimates are without consideration to proposed monitoring and mitigation measures. The USMC is proposing three methods of exercise monitoring (*i.e.,* PEDRO, cold pass, and range cameras). When considering the implementation of the mitigation and monitoring measures described above, the chance of a marine mammal being taken by direct hit is discountable.

Interactions with vessels are not a new experience for bottlenose dolphins in Pamlico Sound. Pamlico Sound is heavily used by recreational, commercial (*e.g.,* fishing, daily ferry service, tugs), and military (including the Navy, Air Force, and Coast Guard) vessels year-round. The NMFS' Southeast Regional Office has developed marine mammal viewing guidelines to educate the public on how to responsibly view marine mammals in the wild and avoid causing a take (*http://www.nmfs.noaa.gov/pr/education/southeast*). The guidelines recommend that vessels should remain a minimum of 50 yards (46 m) from a dolphin, operate vessels in a predictable manner, avoid excessive speed or sudden changes in speed or direction in the vicinity of animals, and not to pursue, chase, or separate a group of animals. The USMC will abide by these guidelines to the fullest extent practicable. The USMC will not engage in high speed exercises should a marine mammal be detected within the immediate area prior to training commencement and will not chase or pursue dolphins.

Based on the description of the action, the other activities regularly occurring in the area, the species that may be exposed to the activity and their observed behaviors in the presence of vessel traffic, and the implementation of measures to avoid vessel strikes, NMFS believes it is unlikely that the operation of vessels during surface-to-surface maneuvers will result in the take of any marine mammals, whether in the form of behavioral harassment, injury, serious injury, or mortality.

Aircraft will move swiftly through the area and will typically fly approximately 914 m (2,999 ft) from the water's surface before dropping unguided munitions and above 4,572 m (15,000 ft) for precision-guided munitions bombing. While the aircraft

may approach as low as 152 m (500 ft) to drop a bomb, this is not the norm and will not be done around marine mammals. Regional whale watching guidelines advise aircraft to maintain a minimum altitude of 300 m (1,000 ft) above all marine mammals, including small odontocetes, and to not circle or hover over the animals to avoid harassment. NMFS' approach regulations limit aircraft from flying below 300 m (1,000 ft) over a humpback whale (*Megaptera novaeangliae*) in Hawaii, a known calving ground, and limit aircraft from flying over North Atlantic right whales (*Eubalaena glacialis*) closer than 460 m (1,509 ft). Given that USMC aircraft will not fly below 300 m on the approach, will not engage in hovering or circling the animals, and will not drop to the minimal altitude of 152 m if a marine mammal is in the area, NMFS believes it is unlikely that the operation of aircraft, as described above, will result in take of bottlenose dolphins in Pamlico Sound.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, serious injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number and manner of takes, alone, is not enough information on which to base a negligible impact determination. NMFS must also consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The USMC has been conducting gunnery and bombing training exercises at BT–9 and BT–11 for years and, to date, no dolphin injury or mortality has been attributed to these military training exercises. The USMC has a history of notifying the NMFS stranding network when any injured or stranded animal comes ashore or is spotted by personnel on the water. Therefore, stranded animals have been examined by stranding responders, further confirming that it is unlikely training contributes to marine mammal injuries or deaths. Due to the implementation of the aforementioned mitigation measures, no take by Level A harassment or serious injury or mortality is anticipated nor is any authorized in the IHA. NMFS is authorizing 25 Level B harassment takes associated with training exercises.

The USMC has proposed a 1,000 yard (914 m) safety zone around BT–9, a conservative measure considering that the distance to NMFS explosive Level B harassment threshold is 228 yards (209 m). They also will consider an area fouled if any dolphins are spotted within 1,000 yards (914 m) of the target area at BT–9, or anywhere within Raritan Bay (where BT–11 is located). The Level B harassment takes allowed for in the IHA will likely result in dolphins being temporarily behaviorally affected by bombing or gunnery exercises. In addition, takes may be attributed to animals not using the area when exercises are occurring; however, this is difficult to calculate. Instead, NMFS looks at whether the specified activities occur during times or within habitat important to vital life functions to better inform its negligible impact determination.

Read *et al.* (2003) concluded that dolphins rarely occur in open waters in the middle of North Carolina sounds and large estuaries, but instead are concentrated in shallow water habitats along shorelines. However, no specific areas have been identified as vital reproduction or foraging habitat. Scientific boat-based surveys conducted throughout Pamlico Sound conclude that dolphins use the areas around the BTs more frequently than other portions of Pamlico Sound (Maher, 2003) despite the USMC actively training in a manner identical to the specified activities described here for years.

As described in the *Affected Species* section of this notice, bottlenose dolphin stock segregation is complex with stocks overlapping throughout the coastal and estuarine waters of North Carolina. It is not possible for the USMC to determine to which stock any individual dolphin taken during training activities belong as this can only be accomplished through genetic testing. However, it is likely that many of the dolphins encountered will belong to the NNCE or SNC stock. These stocks have population estimates of 919 and 4,818, respectively. NMFS is proposing to authorize 25 takes of bottlenose dolphins in total; therefore, this number represents 2.72 and 0.005 percent, respectively, of those populations.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the specified MCAS Cherry Point BT–9 and BT–11 training activities will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. Further, NMFS does not anticipate any impact on annual rates of recruitment or survival for any potentially affected stock.

Subsistence Harvest of Marine Mammals

Marine mammals are not taken for subsistence use within Pamlico Sound; therefore, issuance of an IHA to the USMC for MCAS Cherry Point training exercises will not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area; therefore, there is no requirement for NMFS to consult under Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA.

National Environmental Policy Act (NEPA)

In January, 2009, the USMC released an EA entitled "*Marine Corps Air Station Cherry Point Range Operations Marine Corps Air Station Cherry Point, North Carolina.*" The USMC's EA contains a thorough analysis of the environmental consequences of their proposed action (with specific sections for explosive ordnance, underwater detonations, vessel and tactical vehicle movements, weapons firing, non-explosive practice munitions use, and aircraft overflights on both land and water ranges) on the human environment, including a specific section on marine mammals. Based on the analysis in the EA, the USMC determined that their proposed action will not have a significant impact on the human environment. NMFS has reviewed the USMC's EA and

determined that it is sufficient in addressing the scope of activities identified in the IHA application, marine mammals potentially impacted by those specified activities, and the range of those impacts. NMFS made the USMC's EA available for public comment during the public comment period on the proposed IHA (75 FR 32389). NMFS has adopted the EA for its purposes of issuing an incidental take authorization to the USMC and will not prepare a separate EA. Based on review of the EA and comments received during the public comment period, NMFS has prepared a FONSI which is available upon request (*see* **ADDRESSES**). Therefore, preparation of an Environmental Impact Statement is not necessary for this action.

Dated: November 18, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–29808 Filed 11–24–10; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: 12/20/2010.

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: Patricia Briscoe, 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 additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies 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 services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services 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 services 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 services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, TSA, Central Illinois Regional Airport, Airport Business Center, 2901 E Empire Street, Bloomington, IL.
NPA: United Cerebral Palsy of the Land of Lincoln, Springfield, IL.
Contracting Activity: GSA, Public Buildings Service, Property Management Division, Springfield, IL.

Service Type/Location: Mailroom Operation, IRS, 801 Tom Martin Drive, Birmingham, AL.
NPAs: ServiceSource, Inc., Alexandria, VA (PRIME Contractor), Alabama Industries for the Blind, Talladega, AL (Subcontractor).
Contracting Activity: Dept of Treasury, IRS/Contracts & Acquisition Division, Washington, DC.

Service Type/Location: Janitorial Service, Bureau of Reclamation—Ephrata Field Office, 32 C Street, NW., Ephrata, WA.
NPA: Good Works, Inc., Spokane, WA.
Contracting Activity: Dept of the Interior, Bureau of Land Management, ID–Boise District Office, Boise, ID.

Service Type/Location: Military Environment Support, Program Executive Office for Simulation, Training and Instrumentation (PEO STRI), 12350 Research Parkway, Orlando, FL.
NPA: Able Forces, Inc., Front Royal, VA.
Contracting Activity: Dept of the Army, XR W6EC PEO STRI Orlando, Orlando, FL.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–29753 Filed 11–24–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 12/20/2010.

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 CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/4/2010 (75 FR 31768–31769) and 10/1/2010 (75 FR 60739–60740), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. 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 services to the Government.

2. The action will result in authorizing small entities to provide the services 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 services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

SERVICES

Service Type/Location: Custodial Service, National Weather Service, 728 & 732 Woodlane Rd, Mt. Holly, NJ.
NPA: Occupational Training Center of Burlington County, Mt. Holly, NJ.
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Norfolk, VA.

Service Type/Location: Custodial Service, Joint Base Lewis-McChord, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army, XR W6BB ACA Knox, Fort Knox, KY.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–29754 Filed 11–24–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 31, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29899 Filed 11–23–10; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 17, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29902 Filed 11–23–10; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 10, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29903 Filed 11–23–10; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 3, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29904 Filed 11–23–10; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 24, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29901 Filed 11–23–10; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Public Input for the Study Regarding the Oversight of Existing and Prospective Carbon Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comment.

SUMMARY: Section 750 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or "Act") establishes an interagency working group ("interagency group"), headed by the Commodity Futures Trading Commission (the "CFTC"), to conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets. The members of the interagency group are the Chairman of the CFTC, the Secretary of Agriculture, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Energy Regulatory Commission, the Chairman of the Federal Trade Commission and the Administrator of the Energy Information Administration, or their designees. In conducting the study, the Dodd-Frank Act directs the interagency group to consult, as appropriate, with representatives of exchanges, clearing houses, self-regulatory bodies, major carbon market participants, consumers, and the general public. To assist the interagency group in conducting the study and formulating recommendations for the oversight of existing and prospective carbon markets, the CFTC is issuing this request for information through public comment.

DATES: Comments must be received on or before December 17, 2010.

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

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as mail above.

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

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in CFTC regulation 145.9 (17 CFR 145.9). The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the substance of the request for comments will be retained in the public comment file.

FOR FURTHER INFORMATION CONTACT: Gregory Kuserk, Chief, Market Analysis and Strategic Review Branch, Division of Market Oversight, 202–418–5286, Irina Leonova, Financial Analyst, Division of Market Oversight, 202–418–5646, or Nela Richardson, Research Economist, Office of the Chief Economist, 202–418–5592, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Recently a number of legislative proposals have been introduced in Congress setting out various approaches to reducing carbon emissions. Some of the proposals contain a market-based policy instrument. Various forms of carbon markets have also been established internationally as well as domestically. Some of the examples of those markets are the European Union Emission Trading Scheme, the Clean Development Mechanism, and the Regional Greenhouse Gas Initiative. In addition, markets exist in the U.S. for the trading of sulfur dioxide allowances under the EPA Acid Rain program and nitrogen oxide under the EPA NO_X Trading program. The CFTC also oversees the derivative trading of a number of environmental instruments on the Chicago Climate Futures Exchange and the Green Exchange.[1] Under the various bills, different proposals have been set forth with respect to the oversight of a carbon market that would be established in those bills.

On July 21, 2010 the Dodd-Frank Act was enacted.[2] Section 750 of the Act establishes an interagency working group to study the oversight of existing and prospective carbon markets. The interagency group is composed of the following members or designees: The Chairman of the Commodity Futures Trading Commission, who shall serve as the Chairman of the interagency group, the Secretary of Agriculture, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Energy Regulatory Commission, the Chairman of the Federal Trade Commission[3] and the Administrator of the Energy Information Administration.

The Dodd-Frank Act directs the interagency group to "conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets." In carrying out this study, the Act also directs the interagency group to consult with representatives of exchanges, clearinghouses, self-regulatory bodies, major carbon market participants, consumers and the general public, as the interagency group determines is appropriate. Finally, the Act requires the interagency group to submit to Congress a report, no later than 180 days after the date of enactment of the Act, on the results of the study, including recommendations regarding such oversight.

II. Solicitation for Comments on the Study on Oversight of Carbon Markets

To assist the interagency group in conducting the study on oversight of a carbon market, the CFTC seeks public comment on the following topics and questions:

1. Section 750 of the Dodd-Frank indicates that the goals of regulatory oversight should be to ensure that carbon markets are efficient, secure and transparent. What other regulatory objectives, if any, should guide the oversight of such markets?

2. What are the basic economic features that might be incorporated in a carbon market that would have an effect on market oversight provisions—e.g., the basic characteristics of allowances, frequency of allocations and compliance obligations, banking of allowances, borrowing of allowances, cost containment mechanisms, etc.?

3. Do the regulatory objectives differ with respect to the oversight of spot market trading of carbon allowances compared to the oversight of derivatives market trading in these instruments? If so, explain further.

4. Are additional statutory provisions necessary to achieve the desired regulatory objectives for carbon markets beyond those provided in the Commodity Exchange Act, as amended by the Dodd-Frank Act, or other federal acts that may be applicable to the trading of carbon allowances?

5. What regulatory methods or tools would be appropriate to achieve the desired regulatory objectives?

6. What types of data or information should be required of market participants in order to allow adequate oversight of a carbon market? Should reporting requirements differ for separate types of market participants?

7. To what extent is it desirable or not desirable to have a unified regulatory oversight program that would oversee activity in both the secondary carbon market and in the derivatives markets?

8. To what extent, if any, and how should a U.S. regulatory program interact with the regulatory programs of carbon markets in foreign jurisdictions?

9. What has been the experience of state regulators in overseeing trading in the regional carbon markets and how would that instruct the design of a federal oversight program?

10. Based on trading experiences in SO_2 and NO_X emission allowances what regulatory oversight would market participants and market operators, respectively, recommend?

11. Who are the primary participants in the current primary environmental markets? Who are the primary participants in the current secondary allowance and derivatives environmental markets?

III. Paperwork Reduction Act

Pursuant to the Office of Management and Budget ("OMB") Regulation 5 CFR 1320.3(h)(4), this Notice and request for comment published in the **Federal Register**, which requests general public

[1] The CFTC designated the Green Exchange as a contract market on July 22, 2010; however, the exchange is not yet operational.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[3] The CFTC notes that the text of Section 750(a)(7) of the Act references the "Commissioner of the Federal Trade Commission" as a member of the interagency group, and the CFTC interprets this text as a reference to the Chairman of the Federal Trade Commission.

comment, does not include a collection of information that would require OMB approval. Accordingly, the Paperwork Reduction Act does not apply.

Issued in Washington, DC, on November 19, 2010 by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29780 Filed 11–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2010–OS–0148]

Proposed Collection; Comment Request

AGENCY: Business Transformation Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Business Transformation Agency announces a proposed new public information collection and seeks public comment on the provisions thereof. 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 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Business Transformation Agency, *Attn:* Wide Area Workflow Program Management Office, 1851 S. Bell Street, Arlington, VA 22240–5291.

Title; Associated Form; and OMB Number: Wide Area Work Flow (WAWF); OMB Control Number 0704–TBD.

Needs and Uses: Wide Area Workflow (WAWF) is a DoD enterprise, web-based system that allows secure electronic submission, acceptance and procession of invoices and receiving reports in a real-time, paperless environment, resulting in complete transaction visibility, fewer interest penalties and reduced processing time. WAWF provides the Department and its suppliers the single point of entry to generate, capture and process invoice, acceptance and payments-related documentation and data to support the DoD asset visibility, tracking and payment processes. WAWF also provides the department with a single point of entry to generate, capture and process vouchers for miscellaneous payment claims. Information in identifiable form must be collected to verify the identity and banking information of claimants in order to ensure that benefits are paid to the correct individual. WAWF is not a forms based application but it accepts any supporting documentation as attachments, including the following forms in PDF format: DD1375 Request for Payment of Funeral and/or Internment Expenses (0704–0030); SF182 Authorization, Agreement and Certification of Training; SF270 Request for Advance or Reimbursement (0348–0004); SF1157 Claims for Witness Attendance Fees, Travel and Miscellaneous Expenses. The complete list of miscellaneous payment categories processed through WAWF is available in appendix A of the DoD Guidebook for Miscellaneous Payments.

Affected Public: DoD military personnel, civilian employees, dependents, members of the general public to include Foreign Nationals, and vendors providing goods or services to the DoD.

Annual Burden Hours: 653,230 hours.

Number of Respondents: 59,683.

Responses per Respondent: Average 65.67.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of information collection is to monitor the status of and electronically process invoices, receiving reports and individual claims for payment through the review and validation and approval phases for submission to the Defense Finance and Accounting Service for payment.

Dated: November 12, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–29762 Filed 11–24–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 27, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (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.

Dated: November 22, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: William D. Ford Federal Direct Loan (Direct Loan) Program Federal Direct PLUS Loan Master Promissory Note and Endorser Addendum.

OMB Control Number: 1845–0053.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households; Business or other for-profit; Not for-profit institutions.

Total Estimated Number of Annual Responses: 1,992,600.

Total Estimated Annual Burden Hours: 717,582.

Abstract: The William D. Ford Federal Direct Loan (Direct Loan) Program Federal Direct PLUS Loan Master Promissory Note and Endorser Addendum serves as the means by which a borrower applies for a Direct Consolidation Loan and promises to repay the loan. Related documents included with this collection are: (1) Additional Loan Listing Sheet (provides additional space for a borrower to list loans that he or she wishes to consolidate, if there is insufficient space on the Application and Promissory Note); (2) Request to Add Loans (serves as the means by which a borrower may add other loans to an existing Direct Consolidation Loan within a specified time period); and (3) Loan Verification Certificate (serves as the means by which the U.S. Department of Education obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate).

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4387. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection 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. 2010–29787 Filed 11–24–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 19, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1533–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.204: Removal of Tennessee Capacity Surcharge Tracker to be effective 12/18/2010.

Filed Date: 11/18/2010.

Accession Number: 20101118–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Docket Numbers: RP11–1534–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits tariff filing per 154.204: FGRP effective 1–1–11 to be effective 1/1/2011.

Filed Date: 11/18/2010.

Accession Number: 20101118–5097.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Docket Numbers: RP11–1535–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Termination Language to 6.15 to be effective 12/20/2010.

Filed Date: 11/19/2010.

Accession Number: 20101119–5015.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: RP11–1536–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Housekeeping Filing to be effective 12/20/2010.

Filed Date: 11/19/2010.

Accession Number: 20101119–5017.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 01, 2010.

Docket Numbers: OR10–10–000.

Applicants: Sinclair Pipeline Company, L.L.C. and Sinclair Transportation Company.

Description: Request of Sinclair Pipeline Company, L.L.C. and Sinclair Transportation Company for temporary waiver of tariff filing and reporting requirements.

Filed Date: 03/25/2010.

Accession Number: 20100325–5035.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the

Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29703 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 17, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–881–001.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: Nautilus Pipeline Company, L.L.C. submits tariff filing per 154.203: Baseline refile to be effective 7/25/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5114.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–645–002.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.203: Baseline Compliance to be effective 12/1/2010.
Filed Date: 11/16/2010.
Accession Number: 20101116–5044.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP10–968–002.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits Substitute First Revised Sheet No 42 et al to FERC Gas Tariff, Second Revised Volume No 1, to be effective 7/15/2010.
Filed Date: 11/16/2010.
Accession Number: 20101116–5058.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 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. 2010–29708 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings No. 1

November 17, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1531–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.403: Storage Tracker 11–2010 to be effective 11/1/2010.
Filed Date: 11/16/2010.
Accession Number: 20101116–5091.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP11–1532–000.
Applicants: Venice Gathering System, L.L.C.
Description: Venice Gathering System, L.L.C. submits tariff filing per 154.203: Compliance Filing and Housekeeping Changes to Sheet No. 161, NAESB 1.9 Filing to be effective 11/1/2010.
Filed Date: 11/17/2010.
Accession Number: 20101117–5032.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: CP11–13–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company's Application for a Pipeline Certificate to Abandon Service Only on Various Offshore Facilities Located in the Gulf of Mexico.
Filed Date: 10/21/2010.
Accession Number: 20101021–5076.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 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. 2010–29707 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

November 16, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1528–000.
Applicants: Caledonia Energy Partners, L.L.C.
Description: Caledonia Energy Partners, L.L.C. submits tariff filing per 154.203: Caledonia Energy Partners Order No. 587–U Compliance Filing to be effective 11/1/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5151.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP11–1529–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Credit Annex to be effective 12/15/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5162.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP11–1530–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits tariff filing per 154.203: Clean Up Concord & Formatting to be effective 12/15/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5165.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 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. 2010–29705 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 16, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1323–001.
Applicants: Puget Sound Energy.
Description: Puget Sound Energy submits tariff filing per 154.203: FERC Gas Tariff, first Revised Vol. No. 1 11042010 to be effective 9/21/2010.
Filed Date: 11/4/2010.
Accession Number: 20101104–5054.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: RP10–1189–001.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits tariff filing per 154.203: NWP—Manual Index-Based Capacity Release to be effective 12/15/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5160.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP10–1372–001.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.203: Material Deviations Curative Compliance Filing to be effective 11/1/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5108.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Docket Numbers: RP11–1467–001.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits tariff filing per 154.205(b): Housekeeping Correction to be effective 12/1/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5164.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 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. 2010–29706 Filed 11–24–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

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

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby issuing an Amended Determination of Inapplicability (waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to EERE-funded projects for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

This amendment withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

DATES: *Effective Date:* November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of Recovery Act, Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act.

The Assistant Secretary reserves the right to revisit and amend these determinations, based upon a number of factors, including a change in the manufacturing landscape, such as the entry into the market of new domestic manufacturers.

It has come to the attention of EERE that at least one manufacturer of LED traffic signals (including stop-lights, crosswalk lights and arrows) has recently relocated some of its manufacturing from Mexico back to the United States. These products are now manufactured in the United States of satisfactory quality and in reasonably available quantities to satisfy the project needs of EERE Recovery Act grant recipients.

As a result, the Assistant Secretary has amended the February 11, 2010 nonavailability waiver to withdraw LED traffic lights, arrows and cross walk signals and the adjacent wires and electronic parts necessary for the functionality of the lights themselves. These products are once again subject to the Buy American provisions. The waiver for LED traffic lights, arrows and cross walk signals (as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves), will be withdrawn effective December 1, 2010.

The remaining items covered by the February 11, 2010 Waiver (Plug-in CFLs of 10 inches or less and electronic ballasts for fluorescent lamps) continue to be covered by the February 11, 2010 waiver.

In order for the February 11, 2010 waiver to continue to apply to LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves substantial steps to commit funds for the purchase of the LED traffic lights, arrows and cross walk signals or the adjacent wires and electronic parts necessary for the functionality of the lights themselves must have been made before December 1, 2010.

Substantial steps to commit funds would include, but are not limited to, (1) issuing a Request for Proposals (RFP) on or before December 1, 2010 (applicable only where the grantee accepts a proposal received under that RFP); (2) in the case of a sole source selection: Placing an order for the goods on or before December 1, 2010; (3) commencing a bidding process on or before December 1, 2010; (4) in circumstances where the grantee solicited quotes without an RFP: the grantee purchases the goods based on a quote dated on or before December 1, 2010 and the order for the goods is placed on or before December 1, 2010; or (5) grantee has executed a contract or purchase agreement with a supplier to acquire affected goods on or before December 1, 2010.

Having established a proper justification for the withdrawal of a "nonavailability waiver" based on domestic nonavailability, EERE hereby provides notice that on November 5, 2010 an amended nationwide categorical waiver of Section 1605 of the Recovery Act was issued as detailed *supra.* This amended nationwide categorical waiver withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves. This notice constitutes the detailed written justification required by Section 1605(c).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on November 5, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2010–29781 Filed 11–24–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of limited waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2) (iron, steel, and the relevant manufactured goods are not produced in the United States in

sufficient and reasonably available quantities and of a satisfactory quality) with respect to (1) surface mounting time switches with 24-hour program dials and single-pole-double-throw switches; (2) HVAC units with 8.375′ W × 9.5′ H × 2.72′ D—Only when the application requires an HVAC unit with a height of 10′ or less due to documented space constraints; (3) low temperature thermostats with a temperature range of 15–55 degrees Fahrenheit and manual reset; (4) Programmable DDC controllers for LON protocol, where an existing LON system exists that will not interface with other protocols without the input of extensive time and expense equal to or greater than the cost of the controllers themselves; and (5) Hardware necessary for implementation of Honeywell Enterprise Buildings Integrator (EBI) software for integration of water management and HVAC systems including: Customized Dell PowerEdge T610 Computer Server; Honeywell XL50UMMIPC-CBLON; Echelon LPR–10 #42100R; Sloan—MCR231–D; Sloan—MCR140A, that will be used on eligible EERE-Recovery Act funded projects.

DATES: *Effective Date:* November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that (1) surface mounting time switches with 24-hour program dials and single-pole-double-throw switches; (2) HVAC units with 8.375′ W × 9.5′ H × 2.72′ D—Only when the application requires an HVAC unit with a height of 10′ or less due to documented space constraints; and (3) low temperature thermostats with a temperature range of 15–55 degrees Fahrenheit and manual reset; (4) Programmable DDC controllers for LON protocol, where an existing LON system exists that will not interface with other protocols without the input of extensive time and expense equal to or greater than the cost of the controllers themselves; and (5) Hardware necessary for implementation of Honeywell Enterprise Buildings Integrator (EBI) software for integration of water management and HVAC systems including: Customized Dell PowerEdge T610 Computer Server; Honeywell XL50UMMIPC–CBLON; Echelon LPR–10 #42100R; Sloan—MCR231–D; Sloan—MCR140A, that will be used on eligible EERE-Recovery Act funded projects qualify for the "nonavailability" waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determination.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to "scout" for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the five products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The NIST MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on November 10, 2010, five nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on November 5, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2010–29775 Filed 11–24–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–8]

Environmental Impact 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 11/15/2010 Through 11/19/2010. 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. 20100449, Draft EIS, USFS, MT, Stillwater Mining Revised Water Management Plans and BOE Ranch LAD, Implementation, Stillwater and Nye Counties, MT, *Comment Period Ends:* 01/10/2011, *Contact:* Patrick Pierson 406–657–6200 Ext. 213.

EIS No. 20100450, Draft EIS, USFS, ID, Upper Lochsa Land Exchange Project, Proposes to Exchange National Forest System Land for approximately 39,371 Acres of western Pacific Timber Land, Federal Land Exchange, Clearwater, Nez Perce and Idaho Panhandle National Forests, Clearwater, Latah, Idaho, Benewah, Kootenai and Bonner Counties, ID, *Comment Period Ends:* 02/23/2011, *Contact:* Teresa Trulock 208–935–4256.

EIS No. 20100451, Final EIS, USN, ME, Brunswick Naval Air Station, Disposal and Reuse, Implementation, Brunswick, ME, *Wait Period Ends:* 12/27/2010, *Contact:* Thomas Stephan 215–897–4916.

EIS No. 20100452, Final Supplement, TPT, CA, Presidio Trust Management Plan (PTMP), Updated Information on the Preferred Alternative for the Main Post District of the Presidio of San Francisco, Implementation, City and County of San Francisco, CA, *Wait Period Ends:* 12/27/2010, *Contact:* John G. Pelka 415–561–5356.

EIS No. 20100453, Draft EIS, USACE, 00, Savannah Harbor Expansion Project, Navigation Improvement to the Federal Navigation Channel, Chatham County, GA and Jasper County, SC, *Comment Period Ends:* 01/10/2011, *Contact:* William G. Bailey 912–652–5781.

EIS No. 20100454, Final EIS, USAF, AZ, Barry M. Goldwater Ranger East Range Enhancements, Proposes to Take Ten Different Actions would Enhance Range Operations and Training, Yuma, Pima and Maricopa Counties, AZ, *Wait Period Ends:* 12/27/2010, *Contact:* Lisa McCarrick 623–856–9475.

Amended Notices

EIS No. 20100349, Draft Supplement, FHWA, WI, Wisconsin Highway Project, Mobility Motorized and Nonmotorized Travel Enhancements, Updated Information on New Alternatives, and Evaluates a Staged Improvement, US18/151 (Verona Road) and the US 12/14 (Beltine) Corridors, Dane County, WI, *Comment Period Ends:* 12/17/2010, *Contact:* Johnny Gerbitz 608–829–7500; Revision to FR Notice Published 09/03/2010: Extending Comment Period from 10/29/2010 to 12/17/2010.

Dated: November 22, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–29827 Filed 11–24–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Archers Cargo Express, Inc. (NVO), One Cross Island Plaza, Suite 102, Rosedale, NY 11422, Officers: Diane B. Pira Sclafani, Secretary/Director (Qualifying Individual), Raman Patial, President/Director, Application Type: New NVO License.

Arlette P. Porras dba RA International (NVO & OFF), 1900 Los Alamitos Drive, Placentia, CA 92870, Officer: Arlette P. Porras, Sole Proprietor, Application Type: New NVO & Off License.

Baron Worldwide, L.L.C. (OFF), 7009 S. Jordan Road, Centennial, CO 80112, Officers: Misha B. Schryer, President (Qualifying Individual), James R. Johnson, Member, Application Type: New OFF License.

Cargo Agents, Inc. (NVO & OFF), 143–30 38th Avenue, Suite 1H, Flushing, NY 11354, Officers: Angel L. Velez, Chief Export Officer/Corporate Officer (Qualifying Individual), Jose Donado, President, Application Type: QI Change.

CargoLogic USA LLC (NVO & OFF), 182–16 149th Road, #212, Springfield Gardens, NY 11413, Officers: Raphael Polonia, Vice President (Qualifying Individual), Alex Epshteyn, President/Secretary, Application Type: New NVO & OFF License.

DNIPRO LLC (NVO & OFF), 645 West 1st Avenue, Roselle, NJ 07203, Officers: Ina Adamashvili, Manager (Qualifying Individual), Igor Pluta, President, Application Type: New NVO & OFF License.

Everglory Logistics, Inc. (NVO & OFF), 440 McClellan Highway, #105F2, East Boston, MA 02128, Officers: Ray Mui, Treasurer & Secretary (Qualifying Individual), Joe Phan, President, Application Type: New NVO & OFF License.

Hawaii Intermodal Tank Transport, LLC (NVO & OFF), 2350 S. Dock Street, #D, Palmetto, FL 34221, Officers: Bahman Sadeghi, Managing Member (Qualifying Individual), Michael Tran, Manager, Application Type: New NVO & OFF License.

ITL USA Inc. dba International Transport & Logistics (ITL) USA Inc. (NVO & OFF), 1200 Route 22 East, Suite 2000, Bridgewater, NJ 08807, Officers: Sunil Chopra, President/CEO (Qualifying Individual), Jan Bock, Director, Application Type: Trade Name Change.

KGL America, Inc. (NVO), 1031 W. Manchester Blvd., A, Inglewood, CA 90301, Officers: Young M. Kay, Secretary/CFO/Director (Qualifying Individual), Bong K. Ji, President/CEO/Director, Application Type: New NVO License.

Kinetix International Logistics, LLC (NVO & OFF), 5400 Shawnee Road, #105, Alexandria, VA 22312, Officers: Shayne L. Berlo, Executive Vice President (Qualifying Individual), Grace Bishar, CEO/Secretary/Treasurer, Application Type: New NVO & OFF License.

L & T General Enterprises, LLC dba South Atlantic Shipping Co. (NVO), 801 Sunnyvale Drive, Wilmington, NC 28412, Officers: David G. Sneeden,

Member/Manager, Connie M. Clemmons, Secretary, Carla C. Youngblood, Member/Manager (Qualifying Individuals), Application Type: New NVO License.

Makro Logistics Group L.L.C. (NVO & OFF), 2229 NW 79th Avenue, Doral, FL 33122, Officers: Paul Mendoza, COO (Qualifying Individual), Marcela Mendoza, President, Application Type: QI Change.

NEC Logistics, Ltd. (NVO), 1–403 Kosugi-cho, Nakahara-ku, Kawasaki City, Kanagawa 211–0063 Japan, Officers: Manabu Saito, Operating Officer/General Manager (Qualifying Individual), Application Type: QI Change.

Pioneer Shipping Logistics, Corp. (NVO), 145–119 Guy R. Brewer Blvd., Jamaica, NY 11434, Officer: Xiao Zhi Lou, President/Vice President/Secretary/Treasurer (Qualifying Individual), Application Type: License Transfer.

Tratto International Forwarders Corporation (NVO & OFF), 801 Madrid Street, #01, Coral Gables, FL 33134, Officers: Gloria V. Trapaga-Torres, Director (Qualifying Individual), Antonio Torres, Director, Application Type: License Transfer.

Victory Maritime Services USA (NVO), 425 West Main Street, Alhambra, CA 91801, Officers: Hans P. Hofmann, VP–West Coast Operations (Qualifying Individual), Xu Chen, President/Secretary, Application Type: New NVO License.

World Ports International, Inc. (NVO & OFF), 510 Plaza Drive, Suite 2230, College Park, GA 30349, Officer: Shanny Kala, President (Qualifying Individual), Application Type: Add NVO Service.

Dated: November 19, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–29713 Filed 11–24–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
4481F	JFJ Freight Forwarders Inc., 13100 NW. 113th Avenue Road, Medley, FL 33178.	September 9, 2010.
019779N	Francisca Envios Inc., 1749 NW. 21st Terrance, Miami, FL 33142	October 16, 2010.
020178N	LCL Shipping USA, Inc., dba Cargo Planet Logistics, 625 West Victoria Street, Compton, CA 90220.	October 15, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–29711 Filed 11–24–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 016769N.
Name: Galaxy Shipping Company, Inc.
Address: 304 Queens Gate Court, Las Vegas, NV 89145.
Date Revoked: October 31, 2010.
Reason: Failed to maintain a valid bond.

License Number: 017572F.
Name: Impex of Doral Logistics, Inc.
Address: 7850 N.W. 80th Street, Unit 3, Medley, FL 33166.
Date Revoked: October 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018516N.
Name: K.E.I. Enterprise dba KEI Logix.
Address: 1815 West 250th Street, Suite 306, Torrance, CA 90501.
Date Revoked: October 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019813N.
Name: Cross Country Van Lines, LLC.
Address: 450 Murray Hill Parkway, Unit E, East Rutherford, NJ 07073.
Date Revoked: October 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021600F.
Name: LTH Logistics, Inc. dba LTH Express.
Address: 837 East Sandhill Avenue, Carson, CA 90746.
Date Revoked: October 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021890N.
Name: Empire Global Logistics, LLC.
Address: 160–51 Rockaway Blvd., Suite 206, Jamaica, NY 11434.
Date Revoked: October 31, 2010.
Reason: Failed to maintain a valid bond.

License Number: 022146N.
Name: Premier Projects International, LLC.
Address: 24707 W. Hardy Road, Spring, TX 77373.
Date Revoked: October 27, 2010.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–29714 Filed 11–24–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291: *1. James A. Jorgenson,* Kenmare, North Dakota; as an individual, to acquire and retain voting shares of Bozeman Bancorp, Inc., and thereby indirectly acquire and retain control of Bank of Bozeman, both of Bozeman, Montana.

Board of Governors of the Federal Reserve System, November 19, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29681 Filed 11–24–10; 8:45 am]

BILLING CODE 6210–01–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 20, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291: *1. Bitterroot Holding Company,* Lolo, Montana; to acquire additional voting shares of West One Bank, Kalispell, Montana. Comments regarding this application must be received not later than December 13, 2010.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Carlile Bancshares, Inc., Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Treaty Oak Bank, Austin, Texas.

Board of Governors of the Federal Reserve System, November 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29724 Filed 11–24–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–116 and CMS–417]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1–.2001Medicare/Medicaid Psychiatric Hospital Survey Data; *Use:* The application must be completed by entities performing laboratory's testing specimens for diagnostic or treatment purposes. This information is vital to the certification process. *Form Number:* CMS–116 (OMB#: 0938–0581); *Frequency:* Biennially and Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 219,000; Total *Annual Responses:* 31,520; *Total Annual Hours:* 23,640. (For policy questions regarding this collection contact Sheila Ward at 410–786–3115. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Use:* The Hospice Request for Certification Form is the identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare program. *Form Number:* CMS–417 (OMB#: 0938–0313); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 3,494; Total *Annual Responses:* 3,494; *Total Annual Hours:* 594. (For policy questions regarding this collection contact Debbie Terkay at 410–786–6835. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *December 27, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer,

Fax Number: (202) 395–6974.

E-mail: *OIRA_submission@omb.eop.gov.*

Dated: November 18, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–29718 Filed 11–24–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ANA Consultant and Evaluator Qualifications Form.

OMB No.: 0970–0265.

Description: The ANA Consultant and Evaluator Qualifications Form is used to collect information from prospective proposal reviewers in compliance with 42 USC Section 2991d–1. The form allows the Commissioner of ANA to select qualified people to review grant applications for Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance, and Environmental Regulatory Enhancement. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents: Native Americans, Native Alaskans, Native Hawaiians and other Pacific Islanders.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Consultant and Evaluator Qualifications Form	300	1	1	300

Estimated Total Annual Burden Hours: 300

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 22, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–29779 Filed 11–24–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0180]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Adoption of Food and Drug Administration Food Code by Local, State and Tribal Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adoption of FDA Food Code by Local, State and Tribal Governments" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793, *Denver.Presley@FDA.HHS.GOV.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 2010 (75 FR 36097), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0448. The approval expires on October 31, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: November 19, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–29688 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0598]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

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 requirements for manufacturers of type A medicated articles.

DATES: Submit either electronic or written comments on the collection of information by January 25, 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: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice Regulations for Type A Medicated Articles—21 CFR Part 226 (OMB Control Number 0910–0154)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including type A medicated articles. A type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A type A medicated article is intended solely for use in the manufacture of another type A medicated article or a type B or type C medicated feed. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency.

Statutory requirements for cGMPs for type A medicated articles have been codified in part 226 (21 CFR part 226). Type A medicated articles which are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 226, a manufacturer is required to establish, maintain, and retain records for type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.,* batch and stability testing), and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of type A medicated articles. The information could also prove useful to FDA in investigating product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 226 to determine whether or not the systems used by manufacturers of type A medicated articles are adequate to assure that their medicated articles meet the requirements of the FD&C Act as to safety and also meet the article's claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

The respondents for type A medicated articles are pharmaceutical firms that manufacture both human and veterinary drugs, those firms that produce only veterinary drugs, and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

	No. of record-keepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
21 CFR Section:					
226.42	115	260	29,900	.75	22,425
226.58	115	260	29,900	1.75	52,325
226.80	115	260	29,900	.75	22,425
226.102	115	260	29,900	1.75	52,325
226.110	115	260	29,900	.25	7,475
226.115	115	10	1,150	.5	575
	.....	.....	.....	.....	157,550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for record preparation and maintenance is based on Agency communications with industry. Other information needed to calculate the total burden hours (*i.e.,* manufacturing sites, number of type A medicated articles being manufactured, etc.) are derived from Agency records and experience.

Dated: November 19, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–29687 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Los Alamos Historical Document Retrieval and Assessment (LAHDRA) Project

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Public Meeting to release CDC's recommendations to the Department of Energy resulting from the release of the Final Report of the Los Alamos Historical Document Retrieval and Assessment (LAHDRA)Project.

Time and Date: 5 p.m.–7 p.m., (Mountain Time), Wednesday, December 8, 2010 and 5 p.m.–7 p.m. Thursday, December 9, 2010.

Place: December 8, 2010, Santa Claran Hotel & Casino in Espanola (25 miles north of Santa Fe on US 84/285), 460 Riverside Drive, Espanola, New Mexico 87532, telephone 877–505–4949.

December 9, 2010, Tularosa Senior & Community Center in Tularosa (14 miles north of Alamogordo on US 70), 1050 Bookout Rd., Tularosa, New Mexico 88352, telephone 575–585–4532.

Status: Open to the public, limited only by the space available. The meeting room(s) accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or a Superfund). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This study group was charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory and Trinity Site since its inception. The purpose of this meeting is to release the CDC's recommendations to the Department of Energy as a result of the release of the Final Report (*http://www.Lahdra.org*).

Matters to Be Discussed: Agenda items for the December 8th meeting include a presentation from the National Center for Environmental Health (NCEH) and poster sessions on various report topics. There will be time for the public to ask questions. At the December 9th meeting, ChemRisk personnel will present on the Final Report's Trinity Site chapter. All agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Phillip R. Green, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE., (Mailstop F–58), Atlanta, Georgia 30333, telephone 770/488–3748, fax 770/488–1539, or e-mail address: *prg1@cdc.gov.*

Dated: November 19, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–29778 Filed 11–24–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–M–0402, FDA–2010–M–0361, and FDA–2010–M–0519]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the Agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov.* FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available

safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2010, through September 30, 2010. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JULY 1, 2010, THROUGH SEPTEMBER 30, 2010

PMA No. Docket No.	Applicant	Trade name	Approval date
P080027, FDA–2010–M–0402	OraSure Technologies, Inc	ORAQUICK HCV RAPID ANTIBODY TEST.	June 25, 2010.
P050034, FDA–2010–M–0361	Vision Care Ophthalmic Technologies, Ltd.	IMPLANTABLE MINIATURE TELESCOPE.	July 1, 2010.
P080026, FDA–2010–M–0519	Abbott Molecular, Inc	ABBOTT REALTIME HBV ASSAY	August 13, 2010.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: November 18, 2010.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–29731 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3229–N]

Medicare Program; Quality Improvement Organization (QIO) Contracts: Solicitation of Proposals From In-State QIOs—Idaho, Maine, South Carolina, and Vermont

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice fulfills the Secretary's obligation under section 1153(i) of the Social Security Act (the Act) to provide at least 6 months' advance notice of the expiration dates of contracts with out-of-State Quality Improvement Organizations (QIOs) before renewing any of those QIOs' contracts. It also specifies the period of time in which in-State QIOs may submit a proposal for those contracts.

DATES: Interested organizations may submit a proposal to perform the QIO work in any of the States listed in this announcement. The request for proposal (RFP) will be made available to all interested organizations through the Federal Business Opportunities (*http://www.fedbizopps.gov*) Web site. CMS anticipates that the RFP for the QIO contracts will be released sometime during the month of February 2011. Interested organizations should monitor the Federal Business Opportunities Web site for all information relating to the RFP.

ADDRESSES: Proposals for the contracts must be submitted to the Centers for Medicare & Medicaid Services, Acquisitions and Grants Groups, OAGM, Attn.: Naomi Haney-Ceresa, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Alfreda Staton, (410) 786–4194.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization program.

Utilization and Quality Control Peer Review Organizations, now known as Quality Improvement Organizations (QIOs), currently review certain health care services furnished under title XVIII of the Social Security Act (the Act) (Medicare) to determine whether those services are reasonable, medically necessary, provided in the appropriate setting, and are of a quality that meets professionally recognized standards. QIO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program that supports our mission to ensure health care quality for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the QIO in each State. Under the HCQIP, QIOs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care provided to Medicare beneficiaries. The Congress created the QIO program in part to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to QIOs. We currently maintain 53 QIO contracts with organizations that provide medical review activities for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as QIOs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with section 1152 of the Act and our regulations at 42 CFR 475.102 and 475.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, a QIO cannot be a health care facility, health care facility association, a health care facility affiliate, or in most cases a payor organization. (The regulations provide that, in the event CMS determines no otherwise qualified non-payor organization is available to undertake a given QIO contract, CMS may select a payor organization which otherwise meets certain requirements to be eligible to conduct Utilization and Quality Control Peer Review as specified in Part B of Title XI of the Act and its implementing regulations.) Section 1152(2) of the Act requires QIOs to perform review functions in an

efficient and effective manner, and perform reviews of quality of care in an area of medical practice where actual performance is measured against objective criteria, which defines acceptable and adequate practice. The selected organization must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding paragraph (i). This provision prohibits CMS from renewing the contract of any QIO that is not an in-State QIO without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the QIO contract for that State. If one or more qualified in-State organizations submit a proposal for the QIO contract within the specified period of time, we cannot automatically renew the current contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract under section 1153(b) of the Act. An in-State QIO is defined under section 1153(i)(3) of the Act as a QIO that has its primary place of business in the State in which review will be conducted (or, be a subsidiary of a parent corporation, whose headquarters is located in that State).

There are currently 4 QIO contracts with entities that do not meet the statutory definition of an in-State QIO. The areas affected for purposes of this notice along with the respective contract expiration dates are as follows:

Vermont—July 31, 2011
Maine—July 31, 2011
Idaho—July 31, 2011
South Carolina—July 31, 2011

II. Provisions of the Notice

This notice announces the scheduled expiration dates of the current contracts between CMS and the out-of-State QIOs responsible for review in the areas mentioned above.

Interested in-State organizations may submit a proposal in competing to become the QIO for these States. In order to be eligible for contract award, the organization must have its primary place of business in the States in which review will be conducted or be a subsidiary of a parent corporation, whose headquarters is located in that State. In order to be eligible for contract award, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

a. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, who are representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or payor organization. However, statutes and regulations provide that, in the event CMS determines no otherwise qualified non-payor organization is available to undertake a given QIO contract, CMS may select a payor organization which otherwise meets requirements to be eligible to conduct Utilization and Quality Control Peer Review as specified in Part B of Title XI of the Act and its implementing regulations.

c. In order to meet the "substantial number of doctors of medicine and osteopathy" requirements as specified above in paragraph A.1.a, an organization must state and have documentation in its files showing that it is composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirements as specified above in paragraph A.1.a, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternatively, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its proposal, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or payor organization.

c. An organization meets the requirements specified above in paragraph A.2.a., if it demonstrates that it has available to it at least one physician in every generally recognized specialty and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who Is a Representative of Consumers on Its Governing Board

If one or more organizations meet the above requirements in a QIO area and submit proposals for the contracts in accordance with this notice, we will consider those organizations to be potential sources for the 4 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the QIO contract to perform the QIO statement of work.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: October 28, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–28817 Filed 11–24–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned subcommittee:

Time and Date: 2 p.m.—3:30 p.m. Eastern Standard Time, January 4, 2011.

Place: Teleconference.

Status: Open to the public, limited only by availability of telephone ports. The public is welcome to participate during the public comment period. A public comment period is tentatively scheduled from 3 p.m.—3:15 p.m. To participate in the teleconference, please dial 1–877–928–1204 and enter conference code 4305992.

Purpose: The ES will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matter to be Discussed: The ES will discuss a strategy for addressing its charge to provide a preliminary overview to the ACD on ethical issues related to non-communicable disease prevention and control and an ethics framework to guide CDC programs and activities.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Drue Barrett, Ph.D., Designated Federal Officer, ACD, CDC—ES, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404) 639–4690. E-mail: *dbarrett@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 18, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–29774 Filed 11–24–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0585]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 27 and 28, 2011, from 8 a.m. to 6 p.m.

FDA is opening a docket for public comment on this meeting. The docket number is FDA–2010–N–0585. The docket will open for public comment on November 26, 2010. The docket will close on January 25, 2011. Interested persons may submit electronic or written comments regarding this meeting. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit a single copy of electronic comments or a paper copy of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this meeting notice. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Location: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: James Engles, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 27 and 28, 2011, the committee will discuss and make recommendations regarding the possible reclassification of devices indicated for use in electroconvulsive therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 14, 2011. Oral presentations from the public will be scheduled at approximately 10 a.m., immediately following the FDA's presentation, on January 27, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 6, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 7, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets. FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 18, 2010.

Thinh Nguyen,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–29824 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: AIDS and Related Research.

Date: December 16–17, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. 301–435–1050. *freundr@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.

Date: January 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892. 301–435–0483. *jacobsonrh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29752 Filed 11–24–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders; Special Emphasis Panel.

Clinical Research Center on Auditory Neuropathy Spectrum Disorder.

Date: December 16, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PHD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 19, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29751 Filed 11–24–10; 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, Member Conflict: Bioengineering Sciences and Technologies.

Date: December 15–16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Amy L Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5152 MSC 7844, Bethesda, MD 20892. 301–435–1159. *rubinsteinal@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29749 Filed 11–24–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board.

Date: December 7, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: Presentation and discussion will include recommendations from the Translational Medicine and Therapeutics working group and the Intramural Research Program working group. Any supporting documentation for this meeting, including the agenda, will be available at *http://smrb.od.nih.gov.* Sign up for public comment will begin at approximately 7:30 a.m. on December 7 and will be restricted to one sign in per person. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the contact person's address below.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Lyric Jorgenson, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. *smrb@mail.nih.gov.* (301) 496–6837.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts of the Members.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

The meeting will also be Webcast. The draft meeting agenda and other information about the SMRB, including information about access to the Webcast, will be available at *http://smrb.od.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 19, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29748 Filed 11–24–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 14, 2010, from 8 a.m. to approximately 5:30 p.m. and on December 15, 2010, from 8 a.m. to approximately 12:45 p.m.

Location: Hilton Washington DC/North, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Bryan Emery or Pearline Muckelvene, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–71), 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 14, 2010, in the morning, the committee will discuss the risk of dengue virus infection in blood donors. In the afternoon, the committee will discuss murine leukemia virus-related human retroviruses and blood safety. On December 15, 2010, in the morning, the committee will hear updates on the following topics: (1) November 4 and 5, 2010, meeting of the Health and Human Services Advisory Committee on Blood Safety and Availability and (2) December 9 and 10, 2010, FDA workshop entitled "Product Development Program for Interventions in Patients With Severe Bleeding Due to Trauma and Other Causes," and (3) Research programs in the Laboratories of Hemostasis and Plasma Derivatives, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On December 14, from 8 a.m. to 5:30 p.m. the meeting is open to the public. On December 15, from 8 a.m. to 12 noon the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 7, 2010. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 11 a.m. and between 3:45 p.m. and 4:15 p.m. on December 14, 2010, and between approximately 11:30 a.m. and 12 noon on December 15, 2010. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 29, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 30, 2010.

Closed Committee Deliberations: On December 15, from 12 noon to 12:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs

and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 19, 2010.

Thinh Nguyen,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–29818 Filed 11–24–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–46]

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.

DATES: *Effective Date: November 26, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 18, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–29535 Filed 11–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2275–669]

Proposed Information Collection; OMB Control Number 1024–0037

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this information collection. This IC is scheduled to expire on April 30, 2011. We 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.

DATES: To ensure we are able to consider your comments on this IC, we must receive them by January 25, 2011.

ADDRESSES: Send comments to Daniel Odess, Acting Manager, Archeology Program, National Park Service, 1849 C Street, NW., (2275), Washington, DC 20240. *Phone:* 202–354–2128; *Fax:* 202–371–5102; or by e-mail at *mailto:daniel_odess@nps.gov.* You may also send comments to Robert Gordon, Information Collection Clearance Officer, National Park Service, 1201 Eye Street NW., (MS 1237), Washington, DC 20005 (mail); or *robert_gordon@nps.gov (e-mail).*

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact David Gadsby, Archeology Program, National Park Service, 1849 C Street, NW., (2275), Washington, DC 20240. *Phone: 202–354–2101; Fax:* 202–371–5102; or by e-mail at *david_gadsby@nps.gov.* You may also contact Robert Gordon by mail or e-mail (see **ADDRESSES**) or by telephone at 202–354–1936.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4 of the Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470cc), and Section 3 of the Antiquities Act (AA) of 1906 (16 U.S.C. 432), authorize any individual or institution to apply to Federal land managing agencies to scientifically excavate or remove archeological resources from public or Indian lands. 43 CFR part 7 for ARPA, and 43 CFR part 3 for the AA, ensure that the resources are scientifically excavated or removed and deposited, along with associated records, in a suitable repository for preservation. Section 13 of ARPA (16 U.S.C. 470ll) requires that the Secretary of the Interior report annually to the Congress on archeological activities conducted pursuant to the Act. The information collected is reported periodically to Congress and is used for land management purposes. The obligation to respond is required to obtain or retain benefits.

II. Data

OMB Control Number: 1024–0037.

Title: Archeology Permits and Reports—43 CFR parts 3 and 7.

Service Form Number(s): DI–1926 (permit application)

Type of request: Extension of a currently approved information collection.

Description of Respondents: Individuals or organizations wishing to excavate or remove archeological resources from public or Indian lands.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

Estimated average number of respondents: 736 per year.

Estimated average number of responses: 1472 per year (2 per respondent).

Estimated average time burden per response: 3 hours.

Estimated total annual reporting burden: 2,208 hours.

Estimated Annual Nonhour Burden Cost: Not Applicable.

III. Comments

We invite comments on:

- The practical utility of the information being gathered;

• The accuracy of the burden hour estimate;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden to respondents, including use of automated information, collection techniques or other forms of information technology.

Comments you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 19, 2010.

Robert Gordon,

NPS, Information Collection Clearance Officer.

[FR Doc. 2010–29700 Filed 11–24–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

[3401–318]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1024–0021; National Capital Region (NCR) Application for Public Gathering

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on November 30, 2010. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before December 27, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, OMB, at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Ms. Robbin Owen, Chief, Division of Park Programs, National Mall and Memorial Parks, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242; or via fax at 202–401–2430; or via e-mail at *Robbin_Owen@nps.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Robbin Owen by mail, fax, or e-mail (*see* **ADDRESSES**) or by telephone at (202) 619–7225.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0021.

Title: National Capital Region Application for Public Gathering, 36 CFR 7.96(g).

Form Number: None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals, organizations, and State/local/tribal governments that wish to conduct a special event or demonstration on NPS properties within the National Capital Region.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 2,051.

Estimated Number of Responses: 2,051.

Completion Time per Response: 0.5 hours.

Estimated Annual Burden Hours: 1,026.

Estimated Annual Nonhour Burden Cost: $102,550 associated with recovering the costs of processing applications.

Abstract: The information collection responds to the statutory requirement (36 CFR 7.96(g)) that the NPS preserve park resources and regulate the use of units of the National Park System. The information to be collected identifies: (1) Individuals, organizations, and State/local/tribal governments that wish to conduct a public gathering on NPS property in the National Capital Region, (2) the logistics of a proposed demonstration or special event to aid the NPS in regulating activities to ensure that they are consistent with the NPS mission, (3) potential civil disobedience and traffic control issues for the assignment of United States Park Police personnel, and (4) circumstances that may warrant a bond to be assigned to the event for the purpose of covering potential cost to repair damage caused by the event.

Comments: On April 19, 2010, we published in the **Federal Register** (75 FR 20375) a notice of our intent to request that OMB renew this information collection. In that notice, we solicited comments for 60 days, ending on June 18, 2010. We did not receive any comments in response to that notice.

We again invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 19, 2010.

Robert Gordon,

NPS, Information Collection Clearance Officer.

[FR Doc. 2010–29698 Filed 11–24–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L51010000.ER0000 LVRWF0900380 241A; 11–08807; MO#4500018794; TAS: 14X5017]

Notice of Availability of Final Environmental Impact Statement for the Tonopah Solar Energy Crescent Dunes Solar Energy Project, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of

1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Crescent Dunes Solar Energy Project, Nye County, Nevada, and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the Crescent Dunes Solar Energy Project for a minimum of 30 days from the date the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the Final EIS will be mailed to individuals, agencies, organizations, or companies who previously requested copies or who responded to the BLM on the Draft EIS. Printed copies or a compact disc of the Final EIS are available upon request from the BLM Tonopah Field Office, 1553 So. Main Street, P.O. Box 911, Tonopah, Nevada 89049, phone: (775) 482–7800; and at the Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada 89820, phone: (775) 635–4000; or by e-mail request to: *crescent_dunes@blm.gov.* Interested persons may also view the Final EIS at the following Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.* Copies of the Final EIS are available for public inspection at the following Nevada locations:

- BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502
- BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada 89820
- BLM Tonopah Field Office, 1553 South Main, Tonopah, Nevada 89049

FOR FURTHER INFORMATION CONTACT: Timothy Coward, phone: (775) 482–7830; address: BLM Tonopah Field Office, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada 89049; or e-mail: *Timothy_Coward@blm.gov.*

SUPPLEMENTARY INFORMATION: Tonopah Solar Energy, LLC applied to the BLM for a 7,680-acre right-of-way (ROW) on public lands to construct a concentrated solar thermal power plant facility approximately 13 miles northwest of Tonopah in the southern portion of Big Smoky Valley, north of U.S. Highway 95/6 along the Gabbs Pole Line Road (State Highway 89). The facility is expected to operate for about 30 years and have a nominal capacity of 110 megawatts.

The proposed solar power project will use concentrated solar thermal power technology, which uses heliostats with mirrors to direct sunlight on a tower erected in the center of the solar field. A heat transfer fluid is heated as it passes through the receiver tower and is then circulated through a series of heat exchangers to generate steam. The steam is used to power a conventional steam turbine to generate electricity. The exhaust steam from the turbine is condensed and returned via feedwater pumps to the heat exchangers where the steam is generated again. A combination of dry and wet (hybrid) cooling processes are to be used for this project to minimize water use while continuing to maintain efficient power generation.

The project's proposed design includes the heliostat fields, a 653-foot tall central receiver tower, the power block, buildings, parking and laydown areas, evaporating ponds, and an access road. A single overhead 230-kilovolt transmission line will connect the plant to the nearby Anaconda Moly substation.

The Final EIS describes and analyzes the proposed project's site-specific impacts on air quality, biological resources, cultural resources, visual resources, water resources, geological resources, paleontological resources, land use, noise, soils, public health, socioecononomics, traffic and transportation, waste management, hazardous materials handling, worker safety, fire protection, facility design engineering, transmission system engineering, and transmission line safety.

Three action alternatives were analyzed in addition to the No Action Alternative.

On September 3, 2010, the BLM published the Notice of Availability for the Draft EIS for this project in the **Federal Register** (75 FR 54177). The BLM held two public meetings and accepted public comment through e-mail, mail, public meetings, and by telephone. A total of 23 comments were received from individuals, organizations, and agencies. The nature of the comments did not necessitate major changes in the Draft EIS. Therefore, an abbreviated Final EIS was prepared addressing responses to the comments, including an errata section with specific modifications and corrections to the Draft EIS made in response to the comments following the standards of 40 CFR 1503.49(c).

These comments addressed effects on air quality, "Dark Sky" attributes, and viewsheds; water use concerns; wildlife and kangaroo mouse mitigation; and social and economic issues, particulary job opportunities. Concerns raised during the review are addressed, and specific responses provided in the Final EIS.

Authority: 40 CFR 1506.6 and 1506.10.

Thomas J. Seley,

Manager, Tonopah Field Office.

[FR Doc. 2010–29782 Filed 11–22–10; 4:15 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Alabama, Florida, and North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

St. Stephens Meridian, Alabama

T. 1 N., R. 6 E.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines, and the survey of a tract of land held in trust for the Poarch Band of Creek Indians, in Township 1 North, Range 6 East, of the St. Stephens Meridian, in the State of Alabama, and was accepted September 27, 2010.

T. 5 N., R. 6 E.

The plat of survey represents the dependent resurvey of a portion of the subdivision of Section 26, and the survey of parcel no. 6, land held in trust for the Poarch Band of Creek Indians, in Township 5 North, Range 6 East, of the St. Stephens Meridian, in the State of Alabama, and was accepted September 27, 2010.

Tallahassee Meridian, Florida

T. 5 N., R 33 W.

The plat of survey represents the dependent resurvey of a portion of the North boundary, a portion of the subdivisional lines, the survey of the subdivision of Section 5, and the survey of Parcel No. 5, land held in trust for the Poarch Band of Creek Indians, in Township 5 North, Range 33 West, of the Tallahassee Meridian, in the State of Florida, and was accepted September 27, 2010.

Swain County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the 3200 acre tract, land held in trust for the Eastern Band of Cherokee Indians, in Swain County, in the State of North Carolina, and was accepted September 29, 2010.

Swain County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the Qualla Indian Boundary, land held in trust for the Eastern Band of Cherokee Indians, in Swain County, in the State of North Carolina, and was accepted September 16, 2010.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 18, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–29803 Filed 11–24–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Tribal Consultations; Schedule Update

AGENCY: National Indian Gaming Commission, Department of Interior.

ACTION: Notice of tribal consultations; schedule update.

Authority: E.O. 13175.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) published a Notice of Inquiry and Notice of Consultation, 75 FR 70680. The Commission announced to the public a comprehensive review of all its regulations, sought responses to many general and specific questions about its regulations, and announced a schedule of eight consultation sessions to take place during January and February 2011. This notice announces a minor change to that schedule. Should any further changes to the consultation schedule be necessary, the Commission will announce them in the **Federal Register** and on its Web site, *http://www.nigc.gov*.

DATES: See **SUPPLEMENTARY INFORMATION** below for the updated and revised dates, times, and locations of consultation meetings.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202/632–7009; e-mail: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION: The Commission will hold eight tribal consultations on the following dates, at the following times, and in the following locations. Every attempt was made to hold a consultation in each region and to coordinate with other established meetings when establishing this consultation schedule.

Week 1

January 11, 2011, from 9 a.m. to 4 p.m. at the U.S. Grant Hotel, 326 Broadway, San Diego, CA 92101.

January 12, 2011, from 9 a.m. to 4 p.m. at the Cache Creek Casino Resort, 14455 Highway 16, Brooks, CA 95606.

January 14, 2011, from 9 a.m. to 4 p.m. at the Little Creek Resort, 91 W. State Route 108, Shelton, WA 98584.

Week 2

January 18, 2011, from 9 a.m. to 4 p.m. at the Riverwind Casino—Hotel, 1544 West Highway 9, Norman, OK 73072.

January 20, 2011, from 9 a.m. to 4 p.m. at the Hyatt Regency Tamaya Resort and Spa, 1300 Tuyuna Trail, Santa Ana Pueblo, NM 87004.

Week 3

January 24, 2011, from 9 a.m. to 4 p.m. at the Department of the Interior—South Interior Auditorium, 1951 Constitution Ave., NW., Washington, DC 20240.

Week 4

February 1, 2011, from 9 a.m. to 4 p.m. at the Best Western Ramkota Inn, 2111 North La Crosse St., Rapid City, SD 57701.

February 3, 2011, from 9 a.m. to 4 p.m. at the Seminole Hard Rock Hotel & Casino, 1 Seminole Way, Hollywood, FL 33314.

This new schedule represents only one change from the previous schedule. The Commission swapped the date, time, and location of the two consultation sessions scheduled for week 2.

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov.* Please RSVP at *consultation.rsvp@nigc.gov.*

Dated: November 19, 2010.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2010–29701 Filed 11–24–10; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof,* DN 2770; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Motorola Mobility, Inc. and General Instrument Corporation on November 22, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain gaming and entertainment consoles, related software, and components thereof. The complaint names as respondent Microsoft Corporation of Redmond, WA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2770") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: November 22, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–29736 Filed 11–24–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–032]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 3, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–476 and 731–TA–1179 (Preliminary). (Multilayered Wood Flooring from China). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before December 6, 2010; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 13, 2010.
5. Vote in Inv. No. 731–TA–282 (Third Review)(Petroleum Wax Candles from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 16, 2010.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 22, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–29875 Filed 11–23–10; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on November 19, 2010, a proposed Consent Decree in *The United States of America, the Coeur d'Alene Tribe, and the State of Idaho* v. *Atlantic Richfield Company,* Civ. No. 10–578–EJL, was lodged with the United States District Court for the District of Idaho.

Plaintiffs the United States, the Tribe and the State filed a complaint concurrently with the Consent Decree alleging that Defendant Atlantic Richfield Company is liable pursuant to Section 107(a)(2) of CERCLA for response costs incurred and to be incurred by the United States and the State and for natural resources damages in connection with releases of hazardous substances at or from Operable Unit 3 of the Bunker Hill Mining and Metallurgical Complex Superfund Site (Bunker Hill Site) in northern Idaho. The Complaint alleges Defendant, and its predecessor The Anaconda Company, owned and/or operated mining or milling related facilities within Operable Unit 3. The proposed Consent Decree grants the Defendant a covenant not to sue for response costs, as well as natural resource damages, in connection with the Bunker Hill Site. The United States Environmental Protection Agency incurred response costs, and the United States Department of the Interior, the United States Department of Agriculture, the Tribe and the State are trustees of injured natural resources. The settlement requires the Defendant to pay a total of $6.75 million ($5,062,500 will be paid to EPA for response costs and $1,687,500 will be paid to the natural resource trustees for natural resources damages).

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *U.S., et al.* v. *Atlantic Richfield Company.,* Civ No. 10–578–EJL and D.J. Ref. No. 90–11–3–128/9.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–29716 Filed 11–24–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0283]

Agency Information Collection Activities: Reinstatement, With Change of a Previously Approved Collection for Which Approval Has Expired, Comments Requested

ACTION: 30-day notice of information Collection under review: State Court Organization 2009.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 75, Number 186, pages 59293–59294, on September 27, 2010, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 27, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

—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.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which OMB approval has expired, State Court Organization, 2009.

(2) *The title of the form/collection:* State Court Organization, 2009 or SCO 2009.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form label is SCO–2009, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* State trial and appellate courts and state administrative court offices. *Abstract:* State Court Organization 2009 will focus on the organizational structure of state courts throughout the country. Emphasis will be placed on collecting information pertaining to the number of trial and appellate court judges, the selection of judicial officers, the governance of the judicial branch, the funding and budgets of state courts, appellate and trial court staffing, the use of juries, and sentencing procedures. Moreover, information will be collected on the utilization of information technology systems in state courts. All data collected will be accurate as of December 2009.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* The State Court Organization (SCO) data collection forms will be sent to each of the nation's 56 court systems (those for the 50 states, the District of Columbia, Puerto Rico, and the U.S territories including American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands). The data collection instruments will be in the form of spreadsheets that will basically mirror the electronic and PDF tables produced for the SCO report. There are a total of 62 spreadsheets that the respondents will be asked to complete for their individual states or courts. Consistent with past data collections, recurring tables will be populated with data previously reported in prior SCO publications. Previous SCO surveys, along with pretests of the current data collection spreadsheet, have shown that it should take an estimated half an hour for the 56 court systems to review and revise each pre-populated spreadsheet. Since 38 of the 62 spreadsheets hail from prior SCO surveys, the total burden hours to review, revise, and update the pre-populated SCO spreadsheets for each of the court systems should be about 19 hours (38 spreadsheets * half an hour per spreadsheet = 19 hours per state or U.S. territory). For new spreadsheets, no historical data will be available, and the data collection forms will be blank. Pretests have shown that it should take an hour to provide the requested information for each data collection spreadsheet. Since 24 of the 62 spreadsheets involve the collection of new SCO data, the total burden hours to collect the requested data for each court systems should be about 24 hours (24 spreadsheets * one hour per spreadsheet

= 24 hours per state or U.S. territory). Therefore, each of the 56 respondent state court systems will require 43 hours to complete the SCO data collection request.

(6) *An Estimate of the Total Public Burden (in hours) Associated With the collection:* The total burden hours to complete revision and review portion of the SCO data collection will be 1,064 hours (19 hours to review and revise 38 spreadsheets per court system * 56 respondents = 1,064 hours). The total burden hours involved in collection of the new SCO data will be 1,344 hours (24 hours to provide data for 24 spreadsheets per court system * 56 respondents = 1,344 hours). Therefore, it is estimated that the 56 court systems should require 2,408 hours (1,064 hours to revise and update 38 prior SCO spreadsheets + 1,344 hours to provide data for 24 new SCO spreadsheets) to complete data collection for the SCO project.

If additional information is required contact: Mrs. Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: November 22, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–29783 Filed 11–24–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Health Questionnaire

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Job Corps Health Questionnaire," 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 27, 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, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (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: This ICR requests information on the health status of an applicant to the Job Corps. The information is obtained from the applicant during an interview with the admissions counselor as part of the admissions process. This information collection is 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 provisions 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 1205–0033. The current OMB approval is scheduled to expire on November 30, 2010. For additional information, see the related notice published in the **Federal Register** on August 20, 2010 (75 FR 51485).

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 1205–0033. 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: Employment and Training Administration (ETA).

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Job Corps Health Questionnaire.

Form Number: ETA 653.

OMB Control Number: 1205–0033.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 92,591.

Total Estimated Number of Responses: 92,591.

Total Estimated Annual Burden Hours: 7,716.

Total Estimated Annual Costs Burden: $0.

Dated: November 19, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–29726 Filed 11–24–10; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Cancellation of Open Meeting

AGENCY: U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The business meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) scheduled for teleconference on Friday, December 3, 2010 from 2 to 3:30 p.m., has been cancelled. This meeting was announced

in the **Federal Register** of November 4, 2010 at 75 FR 68007.

FOR FURTHER INFORMATION CONTACT: Gregory Green (202) 693–4734

Signed in Washington, DC, this 19th day of November 2010.

John M. McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2010–29746 Filed 11–24–10; 8:45 am]

BILLING CODE 4510–79–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Search Committee for LSC President ("Search Committee" or "Committee") will meet on November 29, 2010. The meeting will begin at 12 p.m. (Eastern Time) and continue until conclusion of the Committee's agenda.

LOCATION: Sidley and Austin, LLP, 1501 K Street, NW., Washington, DC 20005.

STATUS OF MEETING: Closed. The meeting of the Search Committee will be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to interview select candidates for the position of LSC President. [No new paragraph here] Such closure is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(e).[1]

The transcript of any portions of the closed session falling within the relevant provision of the Government in Sunshine Act, 5 U.S.C. 552b(c)(6), and LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of Agenda.
2. Review of applications regarding candidates for the position of LSC President.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: November 22, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–29885 Filed 11–23–10; 11:15 am]

BILLING CODE 7050–01–P

[1] 45 CFR 1622.5(e) protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Meeting

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the scheduling of a Sunshine Act Meeting on the proposed 2011–2013 research agenda of the Merit Systems Protection Board's Office of Policy and Evaluation.

DATE AND TIME: Wednesday, December 8, 2010, at 10 a.m.

PLACE: Surface Transportation Board, First Floor Hearing Room, 395 E Street, SW., Washington, DC 20423.

STATUS: Open.

FOR FUTHER INFORMATION CONTACT: Laura Shugrue, Deputy Director, Office of Policy and Evaluation, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–6772, ext. 1350; *research.agenda@mspb.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552(b)), and in accordance with the Merit Systems Protection Board's ("MSPB" or "Board") regulations at 5 CFR 1206.1–12, the MSPB will hold a meeting on the research activities proposed for inclusion in the next three-year cycle of studies to be conducted by MSPB's Office of Policy and Evaluation ("OPE"). The MSPB has statutory responsibility to conduct objective, non-partisan studies that assess and evaluate Federal merit systems policies, operations, and practices. See 5 U.S.C. 1204(a)(3).

Earlier this year, MSPB stakeholders were invited to provide feedback and ideas for the research agenda. During this meeting, OPE staff will present the 29 proposed study topics to the Board Members. In addition, several key stakeholders are invited to present their views on the research topics at the meeting. A recording of the meeting will be made available on the MSPB's Web site.

The research topics are listed below, organized into six broad areas of related research. Further description of these topics is available on the MSPB's Web site at *http://www.mspb.gov.* The public can provide comments on the proposed research agenda by e-mailing *research.agenda@mspb.gov.* Comments will be accepted through December 31, 2010.

Hiring and Assessment

1. Recruiting and Hiring with USAJOBS
2. The First Hurdle: Winnowing the Applicant Pool
3. Self-Assessment of Performance and Qualifications
4. Personality Assessments and Federal Hiring
5. How Do Selecting Officials Make Hiring Decisions?
6. Choosing Between Internal and External Hiring

Supervision and Leadership

7. Recruiting for the Senior Executive Service
8. Supervisor Selection: Assessment Tools and Selection
9. Supervisors' Perceptions of Their Role, Skills, Motivation and Training Needs
10. Appropriate Use of Supervisory Authority
11. Dual Career Tracks for Supervisors and Technical Specialists
12. Leadership in Public Service: Politics and Policy

Defending Merit

13. Merit System Principles Education
14. Clean Records and the Public Interest
15. Treatment of Temporary Employees
16. Employment of Persons with Disabilities in the Federal Government
17. Workplace Violence
18. Focus on Veterans' Hiring

Focus on the Office of Personnel Management

19. Hiring Reform
20. OPM Oversight in a Decentralized Civil Service
21. Issues with the Federal Classification System
22. Can We Learn More From Demonstration Projects?

Performance Management

23. What Is—and How Do You Measure—Job Performance?
24. The Extra Mile: Employee Engagement and High Performance
25. Awards Programs

Building an Effective Workforce

26. The Human Resources Workforce: Rising to the Challenge?

27. Building Effective Partnerships Between Management and Unions

28. Technology in the Workplace: What Do We Expect of Employees?

29. Challenges of the Aging Workforce

The public is welcome to attend this meeting for the sole purpose of observation. Persons with disabilities who require reasonable accommodation to attend this event should direct the request to the MSPB Director of Equal Employment Opportunity at (202) 653–6772, ext. 1194 or V/TDD 1–800–877–8339 (Federal Relay Service). All such requests should be made at least one week in advance of the meeting.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2010–29888 Filed 11–23–10; 11:15 am]

BILLING CODE 7400–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: December 8, 2010, 8:30 a.m.–5:15 p.m.; December 9, 2010, 8:30 a.m.–11:45 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Kristen Oberright, Office of the Director, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Director. Discussion of CI research initiatives, education, diversity, workforce issues in CI and long-range funding outlook.

Dated: November 22, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–29747 Filed 11–24–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, December 1, 2010, at 8 a.m.; and Thursday, December 2, 2010 at 8 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

STATUS: Some portions open, some portions closed.

Open Sessions:

December 1, 2010

8 a.m.–8:05 a.m.
8:05 a.m.–9:50 a.m.
9:50 a.m.–11 a.m.
11 a.m.–12 p.m.
1 p.m.–1:15 p.m.
1:15 p.m.–2 p.m.

December 2, 2010

8 a.m.–8:30 a.m.
8:30 a.m.–10 a.m.
10 a.m.–10:15 a.m.
1 p.m.–3 p.m.

Closed Sessions:

December 1, 2010
2 p.m.–3 p.m.
5 p.m.–5:15 p.m.

December 2, 2010

10:15 a.m.–10:30 a.m.
10:30 a.m.–11 a.m.
11 a.m.–12 p.m.

UPDATES: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*.

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

MATTERS TO BE DISCUSSED:

Wednesday, December 1, 2010

Chairman's Introduction

Open Session: 8 a.m.–8:05 a.m., Room 1235

Committee on Science and Engineering Indicators (SEI)

Open Session: 8:05 a.m.–9:50 a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Discussion of key dates and activities for production of *Science and Engineering Indicators 2012 Digest*.
- Discussion and Approval of *Science and Engineering Indicators 2012* Narrative Chapter Outlines.
- Selection of Lead Chapter Reviewers.
- Electronic Distribution of Initial Chapter Drafts for Board Review.
- Update on Graphic Design Review of State Chapter.
- Update on SBE Expert Workshops on Measuring Public Scientific Knowledge and Understanding.
- SRS Data Development Activities.
- Chairman's Summary.

Committee on Education and Human Resources (CEH)

Open Session: 9:50 a.m.–11 a.m., Room 1235

- Approval of Minutes.
- PCAST Report: Prepare and Inspire: K–12 Education in Science, Technology, Engineering, and Math (STEM) for America's Future.
  - Speaker: Dr. James Gates, Jr., PCAST Member.
  - Discussant: Dr. Joan Ferrini-Mundy, Acting Assistant Director HER.
- Update on NSF's Response to the STEM Innovators Report and Other Recent STEM Education Policy Recommendations.
  - Speaker: Dr. Joan Ferrini-Mundy, Acting Assistant Director EHR.

CPP Subcommittee on Polar Issues (SOPI)

Open Session: 11 a.m.–12 p.m., Room 1235

- Chairman's Remarks.
- OPP Director's Remarks.
- U.S. Antarctic Program Review & Timetable.
- Update on Arctic Ice Cover.
- Update on the Polar Research Vessel.

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session: 1 p.m.–1:15 p.m., Room 1235

- Approval of Minutes.
- Discussion of focus groups.
- Other information gathering and next steps related to unsolicited mid-scale research.

Task Force on Merit Review (MR)

Open Session: 1:15 p.m.–2 p.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Status Update on Data-Gathering Activities.
- Initiate Discussion of Community Workshop.

Committee on Programs and Plans (CPP)

Closed Session 2 p.m.–3 p.m., Room 1235

- Committee Chairman's Remarks.
- *NSB Action Items:* Science of Learning Centers: Extension of Funding for Two Centers.

Committee on Audit and Oversight (A&O)

Open Session 3 p.m.–5 p.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Human Resources Update (Dr. Marrett).
- Inspector General's Update (Ms. Lerner).
- FY2010 Financial Statement Audit/FISMA—(Auditors).
- Collaborative Audit Resolution.
- FY2011 OIG Audit Plan.
- OIG Semi-annual Report (Ms. Lerner and Dr. Frye).
- Chief Financial Officer's Update (Ms. Rubenstein).
- Chief Information Officer's Report (Ms. Norris).
- Review of NSB Policy on Award Thresholds Requiring NSB Approval Committee.
- Chairman's Closing Remarks.

Committee on Audit and Oversight (A&O)

Closed Session 5 p.m.–5:15 p.m., Room 1235

- Committee Chair's Opening Remarks.
- Procurement Activities.

Thursday, December 2, 2010

CSB Subcommittee on Facilities

Open Session: 8 a.m.–8:30 a.m., Room 1235

- Chairman's Remarks.
- Review of the NSF Principles Document.
- Discuss Draft Interim Report.
- Discuss Next Steps for Moving Forward to the May 2011 Meeting.

CSB Task Force on Data Policies

Open Session: 8:30 a.m.–10 a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Presentations on Open Access.
- Discussion of March 27–29, 2010 Workshop.
- Closing Remarks.

Committee on Strategy and Budget (CSB)

Open Session: 10 a.m.–10:15a.m., Room 1235

- Approval of Minutes.
- Chairman's Remarks.
- Update on FY 2011 Appropriations Process.
- NSB Budget Update.
- NSF Strategic Plan Update.
- Closing Remarks.

Committee on Strategy and Budget (CSB)

Closed Session: 10:15 a.m.–10:30 a.m., Room 1235

- Update on NSF FY 2012 Budget Development.

Plenary Executive

Closed Session: 10:30 a.m.–11 a.m., Room 1235

- Approval of Plenary Executive Closed Minutes, September 2010.
- Candidate Sites for Board Retreat and Meeting of September 2011.
- Discussion and Selection of Honorary Awards.

Plenary

Closed Session: 11 a.m.–12 p.m., Room 1235

- Approval of Minutes.
- Awards and Agreements (Resolutions).
  - Logistics Contract and Renewal of two Science of Learning Centers.
- Closed Committee Reports.

Plenary

Open Session: 1 p.m.–3 p.m., Room 1235

- Presentation by 60th Anniversary Speaker, Dr. Emily Brodsky.
- Presentation on *NSF Open Government,* Dr. José Munoz.
- Presentation on *NSF Response to Oil Spill Research,* Dr. Timothy Killeen.
- Presentation on *Update on Science, Engineering, and Education for Sustainability (SEES),* Dr. Timothy Killeen.
- Approval of Minutes.
- Chairman's Report.
- Director's Report,
- Open Committee Reports.

Adjourn 3 p.m.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–29881 Filed 11–23–10; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Notice

The Agenda for the 578th ACRS meeting, scheduled to be held on December 2–4, 2010, has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Wednesday, November 17, 2010 (75 FR 70304–70305).

The discussion on the Draft Final Rule and Regulatory Guidance Regarding Enhancements to Emergency Planning Regulations, scheduled to be held on Thursday, December 2, 2010, between 10:15 a.m. and 12:15 p.m., is being postponed to a future meeting.

The discussion on the Staff's Assessment of the RAMONA5–FA Code scheduled to be held on Friday, December 3, 2010, between 10:15 a.m. and 12:15 p.m., is also being postponed to a future meeting.

The discussion on the Future ACRS Activities/Report of the Planning and Procedures Subcommittee, scheduled to be held on Friday, December 3, 2010, between 2 p.m. and 3:30 p.m., is now scheduled from 2 p.m. to 3 p.m.

The discussion on the Reconciliation of ACRS Comments and Recommendations, scheduled to be held on Friday, December 3, 2010, between 3:30 p.m. and 3:45 p.m., is now scheduled from 3 p.m. to 3:15 p.m.

The discussion on the Final Safety Evaluation Report Associated with the Amendment to the AP1000 Design Control Document, scheduled to be held on December 2, 2010, between 1:15 p.m. and 4:15 p.m., will now begin at 10:15 a.m. and is being extended until 7 p.m.

The Preparation of ACRS Reports will now also take place on Friday, December 3, 2010, between 10:15 a.m. and 12:15 p.m. and then again from 3:30 p.m. to 7 p.m.

A revised agenda is posted on the NRC Web site at *http://www.nrc.gov/readingrm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Further information regarding this meeting can be obtained by contacting Ms. Ilka Berrios, Cognizant ACRS Staff (Telephone: 301–415–3179, E-mail: *Ilka.Berrios@nrc.gov*), between 7:30 a.m. and 5:15 p.m. (ET).

Dated: *November 22, 2010*

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–29915 Filed 11–24–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0362]

Notice of Availability; NUREG–1307, Revision 14, "Report on Waste Burial Charges Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The NRC is announcing the completion and availability of NUREG–1307, Revision 14, "Report on Waste Burial Charges," dated November 2010, which updates the cost factor for disposal (B_x) that a licensee uses when calculating the minimum amount of decommissioning funding assurance required, based on changes in waste disposal charges since the previous revision.

ADDRESSES: NUREG–1307 may be purchased from The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328: *http://www.access.gop.gov/sudocs:* 202–512–1800; or The National Technical Information Service, Springfield, Virginia 22161–0002; *http://www.ntis.gov;* or locally, 703–605–6000. The publication may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. The public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS) through the agency's public Web site at *http://www.nrc.gov.* This Web site provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference Staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Office of Nuclear Reactor Regulation, Division of Policy and Rulemaking, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1435, e-mail *Clayton.Pittiglio@nrc.gov.*

SUPPLEMENTARY INFORMATION: A requirement placed upon nuclear power reactor licensees by the NRC is that licensees must annually adjust the estimate of the cost of decommissioning their plants, in dollars of the current year, as part of the process to provide reasonable assurance that adequate funds for decommissioning will be available when needed. This report, which is revised periodically, explains the formula that is acceptable to the NRC for determining the minimum decommissioning fund requirements for nuclear power plants. The sources of information used in the formula are identified, and the values developed for the estimation of radioactive waste burial/disposition costs, by site and by year, are given.

Dated at Rockville, Maryland, November 15, 2010.

For the Nuclear Regulatory Commission

Theodore R. Quay,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Program.

[FR Doc. 2010–29760 Filed 11–24–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2011–34 through CP2011–38; Order No. 591]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add five Global Expedited Package Services 3 contracts to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: November 30, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On November 18, 2010, the Postal Service filed a notice announcing that it has entered into five additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A through 1E—redacted copies of the five contracts and applicable annexes;
- Attachments 2A through 2E—certified statements required by 39 CFR 3015.5(c)(2) for each contract;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for

[1] Notice of United States Postal Service of Filing Five Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application For Non-Public Treatment of Materials Filed Under Seal, November 18, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

prices, an analysis of the formulas, and certification of the Governors' vote; and

• Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for the GEPS 3 product. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contracts' functional equivalency. *Id.* at 3–4. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these five GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.* at 4.

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2011–34 through CP2011–38 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this Order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than November 30, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2011–28 through CP2011–32 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than November 30, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these dockets.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2010–29734 Filed 11–24–10; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–6 and CP2011–33; Order No. 592]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Return Service Contract 2 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: November 30, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Parcel Return Service Contract 2 to the competitive product list.[1] The Postal Service asserts that Parcel Return Service Contract 2 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service states that prices and classifications underlying this contract are supported by Governors' Decision No. 10–5. *Id.* The Request has been assigned Docket No. MC2011–6.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The Postal Service states that the instant contract is the successor contract for the Parcel Return Service Contract 1 product in Docket Nos. MC2009–1 and CP2009–2.[2] The contract has been assigned Docket No. CP2011–33.

Request. In support of its Request, the Postal Service filed six attachments as follows:

• Attachment A—a redacted copy of Governors' Decision No. 10–5, authorizing Parcel Return Service;

• Attachment B—a redacted copy of the contract;

• Attachment C—a proposed change in the Mail Classification Schedule competitive product list;

• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Daniel J. Barrett, Manager, Return Solutions, Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D. Thus, Mr. Barrett contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

A redacted version of the specific Parcel Return Service Contract 2 is

[1] Request of the United States Postal Service to Add Parcel Return Service Contract 2 to the Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, November 17, 2010 (Request).

[2] The contract for Parcel Return Service Contract 1 originally was set to expire on November 7, 2010. In Order No. 576, the Commission granted the Postal Service's Motion for Temporary Relief allowing the contract to remain in effect until November 30, 2010, based on the expectation that the Postal Service would file the successor contract by November 5, 2010. *See* Docket Nos. MC2009–1 and CP2009–1, Motion of the United States Postal Service for Temporary Relief, November 3, 2010, at 2, n.1. By this Order, the Commission extends the effective date until December 31, 2010.

included with the Request. The contract will become effective the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days' notice by either party, but could continue for 3 years.[3] The Postal Service represents that the contract is consistent with 39 U.S.C. 3633 (a). *Id.,* Attachment D.

The Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.,* Attachment F. It also requests that the Commission order that the duration of such treatment of all customer-identifying information be extended indefinitely, instead of ending after 10 years. *Id.,* ¶¶ 1 and 7.

II. Notice of Filing

The Commission establishes Docket Nos. MC2011–6 and CP2011–33 for consideration of the Request pertaining to the proposed Parcel Return Service Contract 2 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Comments are due no later than November 30, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2011–6 and CP2011–33 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 30, 2010.

4. The current contract filed in Docket Nos. MC2009–1 and CP2009–2 for Parcel Return Service Contract 1 is authorized to continue in effect through December 31, 2010.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2010–29770 Filed 11–24–10; 8:45 am]

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[3] The instant contract provides that its term is 2 years from the effective date unless terminated, renewed or extended by both parties in writing. *Id.,* Attachment B, at 5. Governors' Decision No. 10–5 provides that the contract is for 2 years with an option for an additional year if certain conditions are met. *Id.,* Attachment A, at 1.

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three (3) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR(s) describe the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and purpose of information collection:* 3220–0057, Placement Service. The RRB currently utilizes four forms to obtain information needed to carry out its job placement responsibilities. Form ES–2, Supplemental Information for Central Register, is used by the RRB to obtain information needed to update a computerized central register of separated and furloughed railroad employees available for employment in the railroad industry. Form ES–21, Referral to State Employment Service, and ES–21c, Report of State Employment Service Office, are used by the RRB to provide placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI–35, Field Office Record of Claimant Interview, is used primarily by RRB field office staff to conduct in-person interviews of claimants for unemployment benefits. Completion of these forms is required to obtain or maintain a benefit. In addition, the RRB also collects Railroad Job Vacancies information received voluntarily from railroad employers.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 58450 on September 24, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Placement Service.

OMB Control Number: 3220–0057.

Form(s) submitted: ES–2, ES–21, ES–21c, UI–35, and Job Vacancies Reports.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households, Business or-other-for profit, State, Local and Tribal government.

Abstract: Under the RUIA, the Railroad Retirement Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, railroad employers and State Employment Service offices for use in placement, for providing referrals for job openings, reports of referral results and for verifying and monitoring claimant eligibility.

Changes Proposed: The RRB proposes no changes to any of the forms or reports.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form ES–2: .25 minutes.

Estimated Completion Time for Form ES–21: .68 minutes.

Estimated Completion Time for Form ES–21c: 1.5 minutes.

Estimated Completion Time for Form UI–35 (in person): 7 minutes.

Estimated Completion Time for Form UI–35 (by mail): 10.5 minutes.

Estimated Completion Time for Job Vacancies Report: 10 minutes.

Estimated annual number of respondents: 10,750.

Total annual responses: 23,000.

Total annual reporting hours: 1,452.

2. *Title and Purpose of Information Collection:* 3220–0079, Certification Regarding Rights to Unemployment Benefits Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and

is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain the claimant's statement when it is indicated by the claimant, the claimant's employer, or another source that the claimant has voluntarily left work. Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 36451 on June 25, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Certification Regarding Rights to Unemployment Benefits.

OMB Control Number: 3220–0079.

Form(s) submitted: UI–45.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households, Business or-other-for profit.

Abstract: In administering the disqualification for the voluntary leaving of work provision of Section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates that the claimant left voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

Changes Proposed: The RRB proposes no changes to Form UI–45.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form UI–45: 5–15 minutes.

Estimated annual number of respondents: 1,950.

Total annual responses: 2,900.

Total annual reporting hours: 487.

3. *Title and Purpose of Information Collection* 3220–0149, Withholding Certificate for Railroad Retirement Monthly Annuity Payments.

The Internal Revenue Code requires all payers of tax liable private pensions to U.S. citizens to: (1) Notify each recipient at least concurrent with initial withholding that the payer is, in fact, withholding benefits for tax liability and that the recipient has the option of electing not to have the payer withhold, or to withhold at a specific rate; (2) withhold benefits for tax purposes (in the absence of the recipient's election not to withhold benefits); and (3) notify all beneficiaries, at least annually, that they have the option of changing their withholding status or elect not to have benefits withheld.

The Railroad Retirement Board provides Form RRB–W4P, Withholding Certificate for Railroad Retirement Payments, to its annuitants to exercise their withholding options. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB estimates that 25,000 annuitants utilize Form RRB W–4P annually. The completion time for Form RRB W–4P varies depending on individual circumstances. The estimated average(s) for Form RRB W–4P is 39 minutes for recordkeeping, 24 minutes for learning about the law or the form, and 59 minutes for preparing the form.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 58451 on September 24, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Withholding Certificate for Railroad Retirement Monthly Annuity Payments.

OMB Control Number: 3220–0149.

Form(s) submitted: RRB–W–4P, Withholding Certificate for Railroad Retirement Monthly Annuity Payments.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Public Law 98–76, railroad retirement beneficiaries' Tier II, dual vested and supplemental benefits are subject to income tax under private pension rules. Under Public Law 99–514, the non-social security equivalent benefit portion of Tier 1 is also taxable under private pension rules. The collection obtains the information needed by the Railroad Retirement Board to implement the income tax withholding provisions.

Changes Proposed: The RRB proposes no changes to Form RRB–W–4P.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 25,000.

Total annual responses: 25,000.

Total annual reporting hours: 1.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–29759 Filed 11–24–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29502]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 19, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2010. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 14, 2010, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Nuveen Insured Florida Premium Income Municipal Fund [File No. 811–7120]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 19, 2009, applicant transferred its assets to Nuveen Insured Municipal Opportunity

Fund, Inc., based on net asset value. Shareholders of applicant's municipal auction rate cumulative preferred shares ("preferred shares") received one share of the acquiring fund's preferred shares for each preferred share of applicant. Expenses of approximately $364,782 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on November 4, 2009, and amended on November 12, 2010.

Applicant's Address: 333 West Wacker Dr., Chicago, IL 60606.

Nuveen Insured Florida Tax-Free Advantage Municipal Fund [File No. 811–21215]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 19, 2009, applicant transferred its assets to Nuveen Insured Tax-Free Advantage Municipal Fund, based on net asset value. Shareholders of applicant's municipal auction rate cumulative preferred shares ("preferred shares") received one share of the acquiring fund's preferred shares for each preferred share of applicant. Expenses of approximately $265,508 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on November 4, 2009, and amended on November 12, 2010.

Applicant's Address: 333 West Wacker Dr., Chicago, IL 60606.

Eaton Vance Credit Opportunities Fund [File No. 811–21820]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 12, 2010, applicant transferred its assets to Eaton Vance Limited Duration Income Fund, based on net asset value. All of applicant's auction preferred shares were redeemed for cash equal to the liquidation preference of those shares plus all accrued but unpaid distributions. Expenses of $62,647 incurred in connection with the reorganization were paid by applicant and Eaton Vance Management, applicant's investment adviser.

Filing Dates: The application was filed on September 3, 2010, and amended on October 28, 2010.

Applicant's Address: Two International Place, Boston, MA 02110.

AmeriPrime Funds [File No. 811–9096]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 6, 2005, applicant transferred its assets to Unified Series Trust, based on net asset value. Expenses of approximately $22,372 incurred in connection with the reorganization were paid by Unified Fund Services, Inc., administrator for applicant and the acquiring fund.

Filing Dates: The application was filed on December 29, 2005, and amended on November 4, 2010.

Applicant's Address: 431 North Pennsylvania St., Indianapolis, IN 46204.

AmeriPrime Advisors Trust [File No. 811–9541]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2005, applicant transferred its assets to Unified Series Trust, based on net asset value. Expenses of approximately $15,845 incurred in connection with the reorganization were paid by Unified Fund Services, Inc., administrator for applicant and the acquiring fund.

Filing Dates: The application was filed on July 3, 2006, and amended on November 4, 2010.

Applicant's Address: 431 North Pennsylvania St., Indianapolis, IN 46204.

High Yield Income Fund, Inc. [File No. 811–5296]

High Yield Plus Fund, Inc. [File No. 811–5468]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 19, 2009, each applicant transferred its assets to Dryden High Yield Fund, Inc., based on net asset value. Expenses of $153,500 and $157,500, respectively, incurred in connection with the reorganizations were paid by applicants.

Filing Dates: The applications were filed on November 24, 2009, and amended on October 26, 2010. A second amendment was filed by High Yield Plus Fund, Inc. on November 16, 2010.

Applicants' Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Cash Accumulation Trust [File No. 811–4060]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 20, 2010, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $187,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on October 29, 2010.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Neuberger Berman Realty Income Fund Inc. [File No. 811–21315]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 7, 2008, applicant transferred its assets to Neuberger Berman Real Estate Securities Income Fund Inc. (the "Acquiring Fund"), based on net asset value. Applicant's preferred shareholders received an equivalent number of shares of a new series of preferred stock of the Acquiring Fund. Expenses of $200,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 29, 2010.

Applicant's Address: 605 Third Ave., 2nd Floor, New York, NY 10158–0180.

Oak Value Trust [File No. 811–9000]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 7, 2010, applicant transferred its assets to RS Capital Appreciation Fund, a series of RS Investment Trust, based on net asset value. Expenses of $546,124 incurred in connection with the reorganization were paid by RS Investment Management Co. LLC.

Filing Date: The application was filed on October 22, 2010.

Applicant's Address: 1450 Raleigh Rd., Suite 220, Chapel Hill, NC 27517.

Pioneer Small Cap Value Fund [File No. 811–7985]

Pioneer Tax Free Income Fund [File No. 811–2704]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On August 28, 2009 and March 5, 2010, respectively, each applicant transferred its assets to a corresponding series of Pioneer Series Trust II, based on net asset value. Expenses of approximately $18,896 and $49,527, respectively, incurred in connection with the reorganizations were paid by each applicant, the acquiring fund, and Pioneer Investment Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on November 4, 2010.

Applicants' Address: 60 State St., Boston, MA 02109.

Pioneer Mid Cap Growth Fund [File No. 811–3564]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 22,

2010, applicant transferred its assets to Pioneer Select Mid Cap Growth Fund, a series of Pioneer Series Trust I, based on net asset value. Expenses of approximately $142,776 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on November 2, 2010.

Applicant's Address: 60 State St., Boston, MA 02109.

MONY America Variable Account S [File No. 811–5100]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on October 22, 2010, and amended on November 15, 2010.

Applicant's Address: 1290 Avenue of the Americas, New York, NY 10104.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29725 Filed 11–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63340, File No. SR–MSRB–2010–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Fee Changes to Its Real-Time Transaction Price Service and Comprehensive Transaction Price Service, and Termination of its T+1 Transaction Price Service

November 18, 2010.

I. Introduction

On September 30, 2010, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the MSRB's Real-time Transaction Reporting System ("RTRS"). The proposed rule change was published for comment in the **Federal Register** on October 18, 2010.[3] The Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change consists of fee changes to the MSRB's Real-Time Transaction Price Service and Comprehensive Transaction Price Service of RTRS and the consolidation into the Comprehensive Transaction Price Service of its existing T+1 Transaction Price Service. In addition, the proposed rule change would change the name of the Real-Time Transaction Price Service to the "MSRB Real-Time Transaction Data Subscription Service" and would change the name of the Comprehensive Transaction Price Service to the "MSRB Comprehensive Transaction Data Subscription Service." The MSRB proposes an effective date for this proposed rule change of January 1, 2011.

A more complete description of the proposal is contained in the Commission's Notice.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(J) of the Exchange Act[5] and the rules and regulations thereunder. Section 15B(b)(2)(J) of the Exchange Act requires, in pertinent part, that the MSRB's rules shall:

> Provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The Commission believes that the proposed rule change is consistent with the Exchange Act because the proposed rule change provides for commercially reasonable fees to partially offset costs associated with operating RTRS and producing and disseminating transaction reports to subscribers. The proposal will become effective January 1, 2011, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[6] that the proposed rule change (SR–MSRB–2010–09), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29720 Filed 11–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63331; File No. SR–FINRA–2010–059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 4360 (Fidelity Bonds) in the Consolidated FINRA Rulebook

November 17, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 10, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 3020 (Fidelity Bonds) with certain changes into the consolidated FINRA rulebook as FINRA Rule 4360 (Fidelity Bonds), taking into account Incorporated NYSE Rule 319 (Fidelity Bonds) and its Interpretation.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63089 (October 13, 2010), 75 FR 63883 (the "Commission's Notice").

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(J).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA is proposing to adopt NASD Rule 3020 as FINRA Rule 4360 (Fidelity Bonds), taking into account NYSE Rule 319 (and its Interpretation).[5] Proposed FINRA Rule 4360 would update and clarify the fidelity bond requirements and better reflect current industry practices. Unless otherwise noted below, the provisions in NASD Rule 3020 would transfer, subject only to non-substantive changes, as part of proposed FINRA Rule 4360.

NASD Rule 3020 and NYSE Rule 319 (and its Interpretation) generally require members to maintain minimum amounts of fidelity bond coverage for officers and employees, and that such coverage address losses incurred due to certain specified events. The purpose of a fidelity bond is to protect a member against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member's capital.

General Provision

NASD Rule 3020(a) generally provides that each member required to join the Securities Investor Protection Corporation ("SIPC") that has employees and that is not a member in good standing of one of the enumerated national securities exchanges must maintain fidelity bond coverage; NYSE Rule 319(a) generally requires member organizations doing business with the public to carry fidelity bonds. Like NASD Rule 3020, proposed FINRA Rule 4360 would require each member that is required to join SIPC to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member's net capital requirement, with certain exceptions.

NASD Rule 3020(a)(1) requires members to maintain a blanket fidelity bond in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America. Under NYSE Rule 319(a), the Stockbrokers Partnership Bond and the Brokers Blanket Bond approved by the NYSE are the only bond forms that may be used by a member organization; NYSE approval is required for any variation from such forms. Proposed FINRA Rule 4360 would require members to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability. Members may apply for this level of coverage with any product that meets these requirements, including the Securities Dealer Blanket Bond ("SDBB") or a properly endorsed Financial Institution Form 14 Bond ("Form 14").[6]

Most fidelity bonds contain a definition of the term "loss" (or "single loss"), for purposes of the bond, which generally includes all covered losses resulting from any one act or a series of related acts. A payment by an insurer for covered losses attributed to a "single loss" does not reduce a member's coverage amount for losses attributed to other, separate acts. A fidelity bond with an aggregate limit of liability caps a member's coverage during the bond period at a certain amount if a loss (or losses) meets this aggregate threshold. FINRA believes that per loss coverage without an aggregate limit of liability provides firms with the most beneficial coverage since the bond amount cannot be exhausted by one or more covered losses, so it will be available for future losses during the bond period.

Under proposed FINRA Rule 4360, a member's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The proposed rule change modifies the descriptive headings for these Insuring Agreements, in part, from NASD Rule 3020(a)(1) and NYSE Rule 319(d) to align them with the headings in the current bond forms available to broker-dealers. FINRA has been advised by insurance industry representatives that the proposed rule change does not substantively change what is required to be covered by the bond.[7]

In addition, proposed FINRA Rule 4360 would eliminate the specific coverage provisions in NASD Rule 3020(a)(4) and (a)(5), and NYSE Rule 319(d)(ii)(B) and (C), and (e)(ii)(B) and (C), that permit less than 100 percent of coverage for certain Insuring Agreements (*i.e.,* fraudulent trading and securities forgery) to require that coverage for all Insuring Agreements be equal to 100 percent of the firm's minimum required bond coverage. Members may elect to carry additional, optional Insuring Agreements not required by proposed FINRA Rule 4360 for an amount less than 100 percent of the minimum required bond coverage.

Like NASD Rule 3020(a)(1)(H) and NYSE Rule 319.12, proposed FINRA Rule 4360 would require that a member's fidelity bond include a cancellation rider providing that the insurer will use its best efforts to promptly notify FINRA in the event the bond is cancelled, terminated or "substantially modified." Also, the proposed rule change would adopt the definition of "substantially modified" in NYSE Rule 319 and would incorporate NYSE Rule 319.12's standard that a firm must immediately advise FINRA in writing if its fidelity bond is cancelled, terminated or substantially modified.[8]

FINRA is proposing to add supplementary material to proposed FINRA Rule 4360 that would require members that do not qualify for a bond with per loss coverage without an aggregate limit of liability to secure

[4] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[6] Since 1982, firms electing to acquire coverage through the FINRA-sponsored Insurance Program ("Sponsored Program") have been provided with the SDBB. It is the "default" insurance for FINRA members in that when a firm completes the application for the Sponsored Program, they are applying for the SDBB.

[7] For example, previous versions of the SDBB and Form 14 included a separate Insuring Agreement for misplacement; however, in the current versions of the bonds, this coverage is included in both "on premises" and "in transit" coverage.

[8] NYSE Rule 319 defines the term "substantially modified" as any change in the type or amount of fidelity bonding coverage, or in the exclusions to which the bond is subject, or any other change in the bond such that it no longer complies with the requirements of the rule.

alternative coverage. Specifically, a member that does not qualify for blanket fidelity bond coverage as required by proposed FINRA Rule 4360(a)(3) would be required to maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed rule, provided that the member maintains written correspondence from two insurance providers stating that the member does not qualify for the coverage required by proposed FINRA Rule 4360(a)(3). The member would be required to retain such correspondence for the period specified by Exchange Act Rule 17a–4(b)(4). FINRA has been advised by insurance industry representatives that the proposed alternative coverage requirement is necessary for firms that, for example, have had a covered loss paid by an insurer within the past five years or firms that may present certain risk factors that would prevent an insurer from offering per loss coverage without an aggregate limit of liability.

Minimum Required Coverage

NASD Rule 3020 requires fidelity bond coverage for officers and employees of a member. Under NASD Rule 3020(e), the term "employee" or "employees" means any person or persons associated with a member firm (as defined in Article I, paragraph (rr) of the FINRA By-Laws) except: (1) Sole proprietors, (2) sole stockholders and (3) directors or trustees of a member who are not performing acts coming within the scope of the usual duties of an officer or employee. Under NYSE Rule 319(a), any member organization doing business with the public must maintain fidelity bond coverage for general partners or officers and its employees.[9]

Proposed FINRA Rule 4360, similar to NASD Rule 3020 and NYSE Rule 319, would require each member to maintain, at a minimum, fidelity bond coverage for any person associated with the member, except directors or trustees of a member who are not performing acts within the scope of the usual duties of an officer or employee. As further detailed below, the proposed rule change would eliminate the exemption in NASD Rule 3020 for sole stockholders and sole proprietors.

The proposed rule change would increase the minimum required fidelity bond coverage for members, while continuing to base the coverage on a member's net capital requirement. To that end, proposed FINRA Rule 4360 would require a member with a net capital requirement that is less than $250,000 to maintain minimum coverage of the greater of 120 percent of the firm's required net capital under Exchange Act Rule 15c3–1 or $100,000. The increase to $100,000 would modify the present minimum requirement of $25,000. FINRA believes this increase is warranted since the NASD and NYSE fidelity bond rules have not been materially modified since their adoption—over 30 years ago—and $25,000 in 1974 (the year the NASD rule was adopted) is equal to approximately $110,000 today (adjusted for inflation). Although members may experience a slight increase in costs for their premiums under the proposed rule change, FINRA believes that the proposed amendments to the fidelity bond minimum requirements are necessary to provide meaningful and practical coverage for losses covered by the bond.

Under proposed FINRA Rule 4360, members with a net capital requirement of at least $250,000 would use a table in the rule to determine their minimum fidelity bond coverage requirement. The table is a modified version of the tables in NASD Rule 3020(a)(3) and NYSE Rule 319(e)(i). The identical NASD and NYSE requirements for members that have a minimum net capital requirement that exceeds $1 million would be retained in proposed FINRA Rule 4360; however, the proposed rule would adopt the higher requirements in NYSE Rule 319(e)(i) for a member with a net capital requirement of at least $250,000, but less than $1 million.[10]

Under the proposed rule, the entire amount of a member's minimum required coverage must be available for covered losses and may not be eroded by the costs an insurer may incur if it chooses to defend a claim. Specifically, any defense costs for covered losses must be in addition to a member's minimum coverage requirements. A member may include defense costs as part of its fidelity bond coverage, but only to the extent that it does not reduce a member's minimum required coverage under the proposed rule.

Deductible Provision

Under NASD Rule 3020(b), a deductible provision may be included in a member's bond of up to $5,000 or 10 percent of the member's minimum insurance requirement, whichever is greater. If a member desires to maintain coverage in excess of the minimum insurance requirement, then a deductible provision may be included in the bond of up to $5,000 or 10 percent of the amount of blanket coverage provided in the bond purchased, whichever is greater. The excess of any such deductible amount over the maximum permissible deductible amount based on the member's minimum required coverage must be deducted from the member's net worth in the calculation of the member's net capital for purposes of Exchange Act Rule 15c3–1. Where the member is a subsidiary of another member, the excess may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Under NYSE Rule 319(b), each member organization may self-insure to the extent of $10,000 or 10 percent of its minimum insurance requirement as fixed by the NYSE, whichever is greater, for each type of coverage required by the rule. Self-insurance in amounts exceeding the above maximum may be permitted by the NYSE provided the member or member organization certifies to the satisfaction of the NYSE that it is unable to obtain greater bonding coverage, and agrees to reduce its self-insurance so as to comply with the above stated limits as soon as possible, and appropriate charges to capital are made pursuant to Exchange Act Rule 15c3–1. This provision also contains identical language to the NASD rule regarding net worth deductions for subsidiaries.

Proposed FINRA Rule 4360 would provide for an allowable deductible amount of up to 25 percent of the fidelity bond coverage purchased by a member. Any deductible amount elected by the firm that is greater than 10 percent of the coverage purchased by the member[11] would be deducted from the member's net worth in the calculation of its net capital for purposes of Exchange Act Rule 15c3–1.[12] Like the NASD and NYSE rules, if

[9] Under NYSE Rule Interpretation 319/02 (Additional Coverages), the required coverage of the Brokers Blanket Bond must apply, through rider or otherwise, as applicable to: all domestic and foreign guaranteed and non-guaranteed affiliates, subsidiaries and branches; bearer instruments if the member organization handles such securities; limited partners of a member firm if they are also employees; and the partners, officers and employees or person acting in a similar capacity of electronic data processing agencies in their activities on behalf of the member organizations.

[10] For example, NASD Rule 3020 requires a small clearing and carrying firm (*i.e.,* one subject to a $250,000 net capital requirement) to obtain $300,000 in coverage. The same firm, had it been designated to NYSE, would have needed $600,000 in coverage. FINRA believes the increased coverage requirements are appropriate given the larger number/amount of claims that can be satisfied at these levels.

[11] FINRA notes that a member may elect, subject to availability, a deductible of less than 10 percent of the coverage purchased.

[12] NASD Rule 3020 bases the deduction from net worth for an excess deductible on a firm's

the member is a subsidiary of another FINRA member, this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Annual Review of Coverage

Consistent with NASD Rule 3020(c) and NYSE Rule 319.10, proposed FINRA Rule 4360 would require a member (including a firm that signs a multi-year insurance policy), annually as of the yearly anniversary date of the issuance of the fidelity bond, to review the adequacy of its fidelity bond coverage and make any required adjustments to its coverage, as set forth in the proposed rule. Under proposed FINRA Rule 4360(d), a member's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), would be used as the basis for determining the member's minimum required fidelity bond coverage for the succeeding 12-month period. The "preceding 12-month period" includes the 12-month period that ends 60 days before the yearly anniversary date of a member's fidelity bond. This would give a firm time to determine its required fidelity bond coverage by the anniversary date of the bond.

Similar to NASD Rule 3020(c)(2), proposed FINRA Rule 4360 would allow a member that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement to use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such member would not be permitted to carry less minimum fidelity bond coverage in its second year than it carried in its first year.

Exemptions

Based in part on NASD Rule 3020(a), proposed FINRA Rule 4360 would exempt from the fidelity bond requirements members in good standing with a national securities exchange that maintain a fidelity bond subject to the requirements of such exchange that are equal to or greater than the requirements set forth in the proposed rule.[13] Additionally, consistent with NYSE Rule Interpretation 319/01, proposed FINRA Rule 4360 would continue to exempt from the fidelity bond requirements any firm that acts solely as a Designated Market Maker ("DMM"),[14] floor broker or registered floor trader and does not conduct business with the public.

Proposed FINRA Rule 4360 would not maintain the exemption in NASD Rule 3020(e) for a one-person firm.[15] Historically, a sole proprietor or sole stockholder member was excluded from the fidelity bond requirements based upon the assumption that such firms were one-person shops and, therefore, could not obtain coverage for their own acts. FINRA has determined that sole proprietors and sole stockholder firms can and often do acquire fidelity bond coverage, even though it is currently not required, since all claims (irrespective of firm size) are likely to be paid or denied on a facts-and-circumstances basis. Also, certain coverage areas of the fidelity bond benefit a one-person shop (*e.g.,* those covering customer property lost in transit).

FINRA understands that changes to a firm's fidelity bond policy, in coordination with insurance providers, may be impacted by bond renewal cycles and changes required by the insurance industry. FINRA will consider such factors in establishing an implementation date for the proposed rule change upon approval by the SEC.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will update and clarify the requirements governing fidelity bonds for adoption as FINRA Rule 4360 in the Consolidated FINRA Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In July 2009, FINRA published *Regulatory Notice* 09–44 (FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Fidelity Bonds) requesting comment on the proposed rule change. The comment period expired on September 14, 2009. Thirteen comment letters were received in response to the *Regulatory Notice.* A copy of the *Regulatory Notice* is attached as Exhibit 2a to this rule filing. A list of the commenters, and copies of the comment letters, are attached as Exhibit 2b to this rule filing.[17]

As originally proposed in *Regulatory Notice* 09–44, FINRA Rule 4360 provided that any member that is required to be a member of SIPC must maintain fidelity bond coverage with the SDBB, unless they are unable to obtain this coverage, in which case they may use the Form 14. Several commenters noted that only a limited number of insurance carriers offer the SDBB, the standard form of which provides per loss (*i.e.,* per event) coverage without an aggregate limit of liability, and requested that FINRA provide flexibility with respect to bond

minimum required coverage, while proposed FINRA Rule 4360 would base such deduction from net worth on coverage purchased by the member.

[13] In general, the notification provisions of the corresponding exchange rules (*i.e.,* cancellation rider and notification upon cancellation, termination or substantial modification of the bond) require notification to the respective exchange rather than to FINRA. Accordingly, the practical effect for a firm that avails itself of the proposed exemption is that such firm must maintain a fidelity bond subject to the same or greater requirements as in proposed FINRA Rule 4360; however, such firm would be exempt from the requirement that FINRA be notified of changes to the bond and would alternatively comply with the notification provisions of the respective exchange.

[14] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (Order Approving File No. SR–NYSE–2008–46). In this rule filing, the role of the specialist was altered in certain respects and the term "specialist" was replaced with the term "Designated Market Maker."

[15] A one-person member (that is, a firm owned by a sole proprietor or stockholder that has no other associated persons, registered or unregistered) has no "employees" for purposes of NASD Rule 3020, and therefore such a firm currently is not subject to the fidelity bonding requirements. Conversely, a firm owned by a sole proprietor or stockholder that has other associated persons has "employees" for purposes of NASD Rule 3020, and currently is, and will continue to be, subject to the fidelity bonding requirements.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] All references to commenters under this Item are to the commenters as listed and defined in Exhibit 2b.

forms under the proposed rule.[18] These commenters suggested that limiting the bond form requirement to the SDBB restricts competition among insurance carriers, limits the potential of broker-dealers to secure superior coverage at more favorable terms and is likely to result in unfair pricing of such policies, raising costs for firms. The commenters further noted that the proposal creates an uneven playing field in that it promotes certain underwriters and products to the disadvantage of others that offer commensurate coverage, such as a properly endorsed Form 14. One commenter suggested that FINRA amend the proposed rule to set forth the parameters of the preferred bond form instead of prescribing a particular product.[19]

Many commenters noted that an aggregate limit of liability is standard in the industry and important to most underwriters because it quantifies and controls the underwriter's maximum exposure to loss during the bond period.[20] Further, the commenters noted that without an aggregate limit of liability, members' premium costs are likely to increase. Certain commenters believe that a bond with a "restoration of the aggregate" option is the equivalent of "per event" coverage.[21]

In response to the comments, FINRA made certain changes to the original proposal. Specifically, FINRA has amended the proposed rule to remove the requirement that a member maintain fidelity bond coverage with the SDBB, and alternatively with the Form 14. As detailed in the Purpose section of this rule filing, the proposed rule would require a member to maintain blanket fidelity bond coverage with a bond that would provide for per loss coverage without an aggregate limit of liability (*e.g.,* the SDBB or a properly endorsed Form 14). FINRA believes the amendments to the proposal address the issues noted by the commenters while maintaining the aims of the proposed rule to provide blanket per loss fidelity bond coverage unrestricted by an aggregate limit of liability. As noted in detail in the Purpose section of this rule filing, FINRA believes that a member's fidelity bond coverage should not include an aggregate limit of liability because it is important that a member's coverage not be eroded by covered losses within the bond period, thus exposing a member to future losses with a reduced bond limit.

Additionally, FINRA has amended its original proposal for alternative coverage in the supplementary material to the proposed rule to provide that a member that does not qualify for blanket fidelity bond coverage as required by proposed FINRA Rule 4360(a)(3) must maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed rule, provided that the member maintains written correspondence from two insurance providers stating that the member does not qualify for the coverage required by proposed FINRA Rule 4360(a)(3). The member would be required to retain such correspondence for the period specified by Exchange Act Rule 17a–4(b)(4).

One commenter agreed with FINRA's proposal to increase the minimum bond limit requirement because losses often exceed the current minimum bond requirements, which exposes firms' net capital and, in some cases, results in a SIPC liquidation proceeding.[22] Other commenters noted that the proposed increased minimum requirements remain inadequate.[23] According to one commenter, the proposed minimum fidelity bond requirements do not meet comparable limits of liability set for any other insurable exposure in the commercial marketplace and, when registered representatives steal from clients, the losses frequently range from $250,000 to $5 million or more.[24]

Certain other commenters opposed the increase in the minimum bond requirement arguing that it will have a disproportionately negative effect on small firms, including small firms that engage in certain business areas that require a higher net capital amount.[25] Two commenters requested that FINRA provide specific data to justify why the increased minimum fidelity bond requirements are necessary.[26] One commenter suggested that the expansion of the definition of "branch office" will increase fees for securing fidelity bond coverage.[27]

FINRA does not propose to make any changes to the proposed minimum requirements set forth in *Regulatory Notice* 09–44. As stated above in the Purpose section of this rule filing, FINRA believes the increase in the minimum fidelity bond requirements is warranted since the NASD and NYSE fidelity bond rules have not been materially modified since their adoption over 30 years ago; members that have maintained minimum coverage of $25,000 have had claims that exceed this amount; and notwithstanding a slight increase in premium costs for certain members under the proposed rule change, the proposed amendments are necessary to provide meaningful and practical coverage for losses covered by the bond. With respect to the comment regarding the "branch office" definition, FINRA notes that the proposed fidelity bond rule does not implicate the definition of "branch office." Irrespective of FINRA's definition of "branch office," the insurance provider makes the determination as to whether the number of branch offices associated with a member is a relevant criterion in assessing a member's fidelity bond coverage and premiums. FINRA neither imposes a requirement that insurance providers use branch offices as a factor in evaluating a member's qualifications to obtain fidelity bond coverage nor does it require them to use its current definition of branch office to make this determination.

One commenter suggested that the proposed rule require notification to FINRA in the event that the member has experienced a loss or losses that have exhausted its fidelity bond coverage.[28] FINRA did not make any changes to the proposal in this respect because a bond without an aggregate limit of liability by its terms cannot be exhausted.

Two commenters suggested that FINRA incorporate an exemption into the proposed rule for firms that are a subsidiary of a larger parent organization.[29] According to the commenters, parent organizations of members typically purchase their own fidelity bonds, include the member subsidiary as an insured under that program, and provide substantially greater coverage than the minimum requirements under the proposed rule. Moreover, the commenters believe that the premiums paid for the FINRA bond are an unnecessary expense since the coverage already exists. The commenters also noted that, in many cases, a duplication of coverage complicates loss settlements where the bonds of both the member firm and its parent organization are affected by a single loss.

FINRA notes that neither the current fidelity bond rule nor the proposed fidelity bond rule precludes a member from being part of its parent organization's fidelity bond coverage as long as the coverage under the parent's bond provides equal to or greater

[18] FFS, Gallagher, HBHA, ISO, Kwiecinski, SFAA and Travelers.

[19] SFAA.

[20] FFS, Kwiecinski, SFAA and Travelers.

[21] Kwiecinski and SFAA.

[22] Travelers.

[23] First Asset and Gallagher.

[24] Gallagher.

[25] FGS, First Asset, HBHA and PCI.

[26] First Asset and Schriner.

[27] First Asset.

[28] Kwiecinski.

[29] Kwiecinski and Travelers.

coverage than the member's minimum required coverage under the rule. The parent organization's bond must contain a rider that provides for the subsidiary broker-dealer's coverage by enumerating the requirements of the FINRA rule and providing for, at a minimum, the subsidiary's minimum required coverage. Accordingly, FINRA does not propose to amend the proposed rule in this respect as it is unnecessary.

Two commenters urged FINRA to maintain an exemption from the fidelity bond requirements for one-person firms.[30] The commenters noted that FINRA could be requiring coverage that is not available in the marketplace, since the alter ego concept applies to fidelity bond claims for these entities.

As noted above in the Purpose section of this rule filing, many one-person firms currently maintain fidelity bond coverage notwithstanding the exemption in NASD Rule 3020, and claims are likely to be paid based on a facts-and-circumstances analysis, not on a firm's size or structure. As such, FINRA is not proposing any changes to the original proposal in this respect.

One commenter noted that the proposed rule serves no purpose to investors of the financial markets in its application to small firms that do not hold customer funds, execute transactions in securities on public markets, or engage in trading or underwriting (*e.g.,* a firm that solely provides corporate financial advisory services for fee income).[31]

FINRA believes that all members of SIPC should maintain fidelity bond coverage. FINRA does not agree with the commenter's assessment, since any firm could be the target of malfeasance of one of its employees. Thus, FINRA is not proposing to incorporate an exemption for these small firms.

One commenter encouraged FINRA to incorporate a requirement for an insuring agreement for Computer Theft.[32] FINRA did not amend the proposal to add this insuring agreement at this time; however, FINRA understands that this coverage is already included in most basic riders obtained by members at no extra cost, so a member will likely obtain this coverage automatically as part of its fidelity bond coverage.

One commenter supported increased deductible thresholds; however, the commenter suggested deleting the haircut provision because the proposed rule may discourage a firm from pursuing or accepting higher deductibles if it has to take a haircut in its net capital computation for deductibles over 10 percent.[33] Another commenter suggested that the annual review requirement is duplicitous and unnecessary and that the proposed rule should speak solely to minimum bond requirements for members.[34] The commenter noted that fidelity bond reviews should be triggered by changes in a firm's net capital requirement and not subject to an annual requirement, since the firm would likely review how any changes in net capital affect all aspects of the firm when such changes occur. FINRA did not make any amendments to the proposal in these areas as these concepts have not been substantively amended from the legacy NASD rule, and FINRA believes that they are achieving their intended purposes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–059. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–059 and should be submitted on or before December 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29727 Filed 11–24–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63341; File No. SR–NASDAQ–2010–147]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Two Aspects of the Rules and Operation of The NASDAQ Options Market

November 18, 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 November 10, 2010, The NASDAQ Stock Market

[30] SFAA and Travelers.

[31] Akin Bay.

[32] Travelers.

[33] Travelers.

[34] IBI.

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change 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 Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify two aspects of the rules and operation of the NASDAQ Options Market ("NOM"): (1) To eliminate the Closing Cross set forth in Chapter VI, Section 9 of the rules; and (2) to increase the maximum order size from 9,999 to 999,999 contracts in Chapter VI, Section 1 of the rules. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 NASDAQ Options Market ("NOM"), the options trading facility of The NASDAQ Stock Market LLC, has been fully operational for just over two years. After assessing NOM's performance, NASDAQ has identified two minor changes to NOM's operation: (1) Eliminating the Closing Cross set forth in Chapter VI, Section 9 of the rules; and (2) increasing the maximum order size from 9,999 to 999,999 contracts in Chapter VI, Section 1 of the rules. NASDAQ believes that neither of these changes will have a material impact on the operation of NOM or of NOM members.

1. Eliminating the NOM Closing Cross

NASDAQ's proposal to transport the closing cross from NASDAQ's equities market to NOM was intended to determine whether a standard closing cross could aid price discovery and liquidity in a derivative product. Although a few market participants experimented with the NOM Closing Cross just after launch, the Closing Cross never attracted meaningful liquidity. The Closing Cross has not been used by any market participant in any options class for quite some time. Accordingly, NASDAQ is proposing to eliminate that functionality from the technology and from the rule book (Chapter VI, Section 9) governing NOM.

2. Increasing the Maximum Order Size

NASDAQ members have requested the ability to enter orders into the system of greater than 9,999 contracts. The existing limit on order size was a technological constraint that can easily be modified. Accordingly, NASDAQ proposes to modify the system and downstream processes and data feeds to accept orders of up to 999,999 contracts. Following this change, NOM will match the maximum order size currently in place at other options exchanges.[4]

NASDAQ has safeguards in place to protect the market from inadvertent entry of large orders. Each member that requests connectivity through an order entry port is required to specify the maximum order size for its individual port.[5] NASDAQ sets the default maximum order size at 2,500 contracts. Members are permitted to deviate from the default maximum order size but NASDAQ members are required to have processes and procedures in place to ensure the proper entry and monitoring of orders entered into NASDAQ systems. Prior to implementing this change, NASDAQ will issue an alert to members to ensure that they have policies and procedures in place to employ the new functionality in a prudent fashion.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] 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. The proposed rule changes should enhance the NOM market as described above based on NASDAQ's experience operating NOM for two years.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission 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

[3] 17 CFR 240.19b–4(f)(6).

[4] *See*. e.g., BATS Exchange Rule 21.1(e) ("The term "Order Size" shall mean the number of contracts up to 999,999 associated with the Order"); CBOE Regulatory Circular RG 10–43 (March 26, 2010) at *https://www.cboe.org/publish/RegCir/RG10-043.pdf*.

[5] *See* NASDAQ Options Port Request Form at *http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/options_portrequest.pdf*.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

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–NASDAQ–2010–147 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–2010–147. 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,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–147 and should be submitted on or before December 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29721 Filed 11–24–10; 8:45 am]

BILLING CODE 8011–01–P

[10] The text of the proposed rule change is available on Exchange's Web site at *http://nasdaq.cchwallstreet.com/*, on the Commission's Web site at *http://www.sec.gov*, at NASDAQ, and at the Commission's Public Reference Room.

[11] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and Commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting on December 16, 2010, in Aberdeen, Md. At the public hearing, the Commission will consider: (1) Action on certain water resources projects; (2) compliance matters involving two projects; and (3) the rescission of a docket approval. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: December 16, 2010, at 8:30 a.m.

ADDRESSES: Hilton Garden Inn Aberdeen, 1050 Beards Hill Road, Aberdeen, MD 21001.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) Presentations on Climate Change Initiatives to Protect the Chesapeake Bay; (2) hydrologic conditions in the basin; (3) FY–2012 funding of the Susquehanna Flood Forecast and Warning System; (4) ratification/approval of grants/contracts; (5) a Record Retention and Destruction Policy; (6) the FY–2010 Audit Report; (7) a proposed FY–2011 Capital Budget; (8) acquisition of new headquarters facilities; (9) a recommendation for new independent auditors; and (10) amendment of Commission By-Laws. The Commission will also hear Legal Counsel's report.

Public Hearing—Compliance Matters

1. *Project Sponsor:* Chesapeake Appalachia, LLC. Withdrawal ID: Susquehanna River—Hicks (Docket No. 20091201), Great Bend Township, Susquehanna County, Pa.
2. *Project Sponsor:* J–W Operating Company. Pad ID: Pardee & Curtin Lumber Co. C–12H, Shippen Township, Cameron County, Pa.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Anadarko E&P Company LP (Pine Creek—3), Watson Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.720 mgd.
2. *Project Sponsor:* Aqua Pennsylvania, Inc. Project Facility: Monroe Manor Water System, Monroe Township, Snyder County, Pa. Application for groundwater withdrawal of up to 0.415 mgd from Well 6.
3. *Project Sponsor and Facility:* East Resources Management, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.375 mgd.
4. *Project Sponsor and Facility:* EXCO Resources (PA), LLC (West Branch Susquehanna River), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 2.000 mgd.
5. *Project Sponsor:* Hughesville-Wolf Township Joint Municipal Authority. *Project Facility:* Wastewater Treatment Plant, Wolf Township, Lycoming County, Pa. Application for withdrawal of treated wastewater effluent of up to 0.249 mgd.
6. *Project Sponsor and Facility:* Leonard & Jean Marie Azaravich (Meshoppen Creek), Springville Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.
7. *Project Sponsor and Facility:* LHP Management, LLC (Fishing Creek—Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Modification to increase surface water withdrawal up to 0.999 mgd (Docket No. 20090906).
8. *Project Sponsor and Facility:* Linde Corporation (Lackawanna River), Fell

Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.905 mgd.

9. *Project Sponsor and Facility:* Peoples Financial Services Corp. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.990 mgd.

10. *Project Sponsor and Facility:* Ultra Resources, Inc. (Pine Creek), Pike Township, Potter County, Pa. Modification to increase surface water withdrawal up to 1.170 mgd (Docket No. 20090332).

Public Hearing—Projects Scheduled for Rescission Action

1. *Project Sponsor and Facility:* Anadarko E&P Company LP (Pine Creek) (Docket No. 20090304), Cummings Township, Lycoming County, Pa.

Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, e-mail: *srichardson@srbc.net.* Comments mailed or electronically submitted must be received prior to December 10, 2010, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: November 15, 2010.

Paul O. Swartz,

Executive Director.

[FR Doc. 2010–29755 Filed 11–24–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 27, 2010, vol. 75, no. 166, page 52802–52803. This information collection is used to allocate slots and maintain accurate records of slot transfers at High Density Traffic Airports. The information is provided by air carriers and commuter operators, or other persons holding a slot at High Density Airports.

DATES: Written comments should be submitted by December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0524.

Title: High Density Traffic Airports; Slot Allocation and Transfer Methods.

Form Numbers: There are no FAA forms associated with this information collection.

Type of Review: Renewal of an information collection.

Background: The information is reported to the FAA by air carriers, commuter operators or others with slots at high density airports. The respondents must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) slots required to be returned or slots voluntarily returned; (3) requests to be included in a lottery for available slots; (4) usage of slots on a bi-monthly basis; and (5) requests for short-term use of off-peak hour slots. The information is used to allocate and withdraw takeoff and landing slots at high density airports, and confirms transfers of slots made among the operators.

Respondents: Approximately 15 air carriers and commuter operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 34 minutes.

Estimated Total Annual Burden: 707 hours.

ADDRESSES: 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 the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 19, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–29742 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0379]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Motor Carrier Safety Assistance Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA

requests approval to revise and extend an information collection request (ICR) entitled, "*Motor Carrier Safety Assistance Programs (MCSAP).*" The information required consists of grant application preparation, quarterly reports and electronic data documenting the results of driver/vehicle inspections performed by the States. This ICR is being revised due to an increase in the estimated number of State inspections that will be performed annually resulting in a change to the estimated burden to perform this activity. On September 9, 2010, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comment was received.

DATES: Please send your comments by December 27, 2010. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0379. 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 the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Kostelnik, Office of Safety Programs, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington DC 20590. Telephone: 202–366–5721; e-mail: *Jack.kostelnik@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Safety Assistance Program.

OMB Control Number: 2126–0010.

Type of Request: Revision of a currently-approved information collection.

Respondents: State MCSAP lead agencies.

Estimated Number of Respondents: 52.

Estimated Time per Response: Grant application preparation: 79.5 hours each; quarterly report preparation: 8 hours each; and inspection and data upload: 1 minute each.

Expiration Date: February 28, 2011.

Frequency of Response: 1 grant application annually; 4 quarterly reports annually; and approximately 3.4 million total inspections and data uploads annually.

Estimated Total Annual Burden: 13,550 hours. The methods used to calculate the hours necessary to prepare grant applications, upload data, and prepare quarterly reports are based on interviews with the State and Federal personnel charged with those responsibilities. The information required to prepare the applications for grants and the subsequent reports is based on general information ordinarily maintained by the States in the general course of business, and only simple computations are required to determine burden hours. The grant applications and reports are submitted by the 50 States, four Territories, Puerto Rico, and the District of Columbia. Each entity submits one grant request per year and four quarterly reports. About 3.4 million inspection reports are uploaded each year.

The figures reflect only 20 percent of the total estimated hours to perform the activities, since MCSAP reimburses 80 percent of the eligible costs incurred in the administration of an approved plan as set forth in 49 CFR 350.303, 350.309 and 350.311. Labor hours are estimated and an average hourly rate for professional personnel is applied. The four territories of American Samoa, Guam, U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands receive 100 percent Federal funding for their MCSAP activities; therefore they are not included in the computation of burden.

Background: Sections 401 through 404 of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424) established a program of financial assistance to the States to implement programs to enforce: (a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety; and (b) compatible State rules, regulations, standards and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). Section 402(c) of the STAA requires that the Secretary of Transportation (Secretary), on the basis of reports submitted by the States and the Secretary's own inspections, make a continuing evaluation of the manner in which each State is carrying out its approved safety enforcement plan. The STAA's MCSAP provisions are codified at 49 U.S.C. 31102.

The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) further revised MCSAP by broadening its purpose beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. Section 4003 of TEA–21 required States to develop performance-based plans reflecting national priorities and performance goals, revised the MCSAP funding distribution formula, and created a new incentive funding program. As a result, States have greater flexibility in designing programs to address national and State goals of reducing the number and severity of commercial motor vehicle (CMV) crashes.

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) amended 49 U.S.C. 31102(b)(1) to modify and augment the conditions a State must meet to qualify for basic program funds under the MCSAP. The statute requires a State to document in its State Commercial Vehicle Safety Plan (CVSP) its commitment to meet the following additional conditions:

- Deploy technology to enhance the efficiency and effectiveness of CMV safety programs;
- Include, in both the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for driving safely in the vicinity of non-CMVs and CMVs;
- Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors; and
- Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Additionally, section 4106 of SAFETEA–LU amended 49 U.S.C. 31102(c) to provide that States may use a portion of MCSAP basic grant funds to conduct documented enforcement of State traffic laws—both laws and regulations designed to promote the safe operation of CMVs and laws and regulations relating to non-CMVs, when necessary to promote the safe operation of CMVs.

In order for FMCSA to evaluate program effectiveness, it is necessary for the State to provide and maintain information concerning past, present and future program activity. The Final Rule that revised Part 350 to implement

the changes to MCSAP made by SAFETEA–LU was published in the **Federal Register** on July 5, 2007 (72 FR 36769) . The State's grant application, known as the CVSP, must contain the information required by 49 CFR 350.201, 350.211 and 350.213. This information is necessary to enable FMCSA to determine whether a State meets the statutory and administrative criteria to be eligible for a grant. It is necessary that a State's work activities and accomplishments be reported so that FMCSA can monitor and evaluate a State's progress under its approved plan and make the determinations and decisions required by 49 CFR350.205 and 350.207. The FMCSA is required to determine whether each State's efforts meet the intended objectives of its plan. In the event of nonconformity with any approved plan and failure on the part of a State to remedy deficiencies, FMCSA is required to take action to cease Federal participation in that State's plan.

This information collection supports the DOT Strategic Goal of Safety (*i.e.*, reducing commercial truck-related fatalities) by providing financial and technical support to State CMV enforcement efforts.

The FMCSA uses the information in the CVSP to determine whether a State has the necessary resources and authority to undertake the program intended by Congress. After a grant has been awarded to a State, a continuing evaluation of the State's activities is performed to determine whether continued funding is appropriate and if revisions in the State's CVSP should be made. A quarterly report is submitted by the States using Standard Form PPR (SF–PPR) along with a narrative addendum to provide the minimum necessary information to assist in appropriate monitoring of a State's performance, compared to its CVSP, and to permit FMCSA to determine whether the effort of a State is cost efficient and whether Federal assistance should be continued. In addition, inspection data and reports are submitted electronically by the inspecting officer from the field to FMCSA at the time of completion of the inspection.

SAFETEA–LU provides that States may conduct traffic enforcement activities against non-CMVs to promote the safe operation of CMVs. The States are routinely conducting traffic enforcement activities on CMVs and are reimbursed, provided an appropriate inspection was conducted at the time. Previously, non-CMV traffic enforcement was not an eligible MCSAP activity for reimbursement so the States did not capture activity levels for this type of enforcement. The number of non-CMV enforcement activities conducted by the States is relatively minimal since SAFETEA–LU limits the amount of MCSAP grant funding that may be used for non-CMV traffic enforcement activities to no more than five percent of the basic amount a State receives annually.

The quarterly report is created by the State and submitted to FMCSA using inspection data and other information. The collection of uniform data permits analysis and comparison of State programs and facilitates program administration and reporting (*e.g.,* comparison of the data from a single State to the national average, equipment violation and out-of-service trends, *etc.*).

The FMCSA routinely uses quarterly report information to measure individual and collective State program accomplishment and to assist with future program development.

Description of MCSAP forms:

a. *Form MCSAP–1, Motor Carrier Safety Assistance Program:* Use of the MCSAP–1 form is being discontinued. States will be required to submit their grant applications electronically using grants.gov beginning in Fiscal Year 2011. The SF–424 form (OMB No. 4040–0004), available via grants.gov, will be used in place of the previously approved MCSAP–1 form.

b. *Form MCSAP–2, Grant Agreement:* The MCSAP–2 form is the grant agreement that specifies the total amount of the State Program, the State and Federal participating shares, the period of the grant, and the signatures of the responsible State official and the FMCSA State Programs Manager.

c. Form MCSAP–2A, Grant Amendment for Fiscal Year__: The MCSAP–2A form is used to modify the terms of the grant. It is used to increase or decrease the amount of the grant, or to extend the period of the grant. It contains the signatures of the responsible State official and the FMCSA State programs Manager.

In addition, the following documents are provided as part of the CVSP package:

a. *State Training Plan (optional format):* This document is a request for commercial vehicle training courses. It is used by the FMCSA's National Training Center to more effectively schedule training courses to meet the needs of State enforcement agencies.

b. *State Certification:* The CVSP must contain a State Certification signed by the Governor, the State Attorney General, or other specially designated State official. The Certification includes conditions that must be met by the State to receive MCSAP grant funds.

Virtually all (99%) of the information required by the grant is submitted electronically. This includes over 3.4 million inspection reports, which are uploaded electronically from laptop computers at inspection sites in the field to FMCSA annually. The near-universal use of laptops for submitting these inspection reports has resulted in a dramatic reduction in the time burden. The annual CVSPs require signed certifications by State personnel and these certification documents are not, therefore, electronically transmitted.

The FMCSA is the only Federal agency authorized to enforce safety regulations applicable to commercial trucks and buses in interstate commerce. The type of information to be gathered from the States through this information collection is unique to MCSAP. No duplication was identified through the rulemaking process to implement relevant sections of SAFETEA–LU.

Under MCSAP, grants are extended to the States predicated on annual submission of CVSPs. The FMCSA determined that although monthly or bimonthly reports are not needed, a semiannual report would not be sufficient to allow for timely evaluation and changes in State program direction. Therefore, quarterly reports were determined to be the most appropriate, considering burden and Federal need. If the reports were submitted less frequently, FMCSA would be unable to exercise appropriate oversight and administration of the program as envisioned by the Congress.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 18, 2010.

Terry Shelton,

Director, Office of Analysis, Research and Technology.

[FR Doc. 2010–29804 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Physiological Training

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 27, 2010, vol. 75, no. 166, page 52803–52804. This report is necessary to establish qualifications of eligibility to receive voluntary physiological training with the U.S. Air Force and will be used as proper evidence of training. The information is collected from pilots and crewmembers for application to receive voluntary training.

DATES: Written comments should be submitted by December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0101.

Title: Physiological Training.

Form Numbers: AC Form 3150–7.

Type of Review: Renewal of an information collection.

Background: The submission of this application information is authorized by the Federal Aviation Reauthorization Act 1996. The collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF training agreement. The information is used by the Aeromedical Education Division (AAM–400) to determine if the applicant is qualified to receive physiological training.

Respondents: An estimated 5,500 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 8 minutes.

Estimated Total Annual Burden: 733 hours.

ADDRESSES: 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 the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 19, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–29741 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1068X; Docket No. AB 1070X]

Missouri Central Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cass County, MO.; Central Midland Railway Company—Discontinuance of Service and Operating Rights Exemption—in Cass County, MO.

Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for MCRR to abandon and discontinue, and for CMR to discontinue, service over approximately 5.6 miles of rail line extending between milepost 257.283 (near Wingate) and milepost 262.906 (near Pleasant Hill) in Cass County, Mo. Specifically, MCRR proposes to: (1) Abandon the line extending between milepost 257.283 and milepost 262.906; and (2) discontinue service over a portion of the line extending between milepost 262.8 and milepost 262.906, the portion not covered by CMR leased operating rights. CMR proposes to discontinue service and operating rights on the portion of the line extending between milepost 257.283 and milepost 262.8.[1] The line traverses United States Postal Service Zip Code 64080.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFE 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on December 28, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 6, 2010. Petitions to

[1] In 2004, CMR received an exemption to lease and operate a 243.8-mile line of railroad that includes this portion of line. *See Cent. Midland Ry.—Lease and Operation Exemption—Missouri Cent. Ry.,* FD 34363 (STB served Feb.11, 2004).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 C.F.R. § 1002.2 (f)(25).

reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 16, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: For MCRR, Sandra L. Brown, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036; for CMR, Lon Van Gemert, Chief Executive Officer, Central Midland Railway, c/o Progressive Rail Incorporated, 21778 Highview Avenue, Lakeville, MN 55044.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuances on the environment and historic resources. OEA will issue an environmental assessment (EA) by December 3, 2010. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), MCRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MCRR's filing of a notice of consummation by November 26, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: November 19, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–29712 Filed 11–24–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Army Corps of Engineers (USACE), DoD.

SUMMARY: This notice announces actions taken by the FHWA and the USACE that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway projects for a 25.73 mile segment of I–69 in the Counties of Daviess and Greene, State of Indiana, and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before May 25, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576; *telephone:* (317) 226–7344; *e-mail: Michelle.Allen@dot.gov.* The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USACE: Mr. Greg Mckay, Chief, North Section Regulatory Branch, Louisville District, United States Army Corps of Engineers, P.O. Box 59, Louisville, KY 40201–0059; *telephone:* (502) 315–6685; *e-mail: gregory.a.mckay@usace.army.mil.* Normal business hours are 8 a.m. to 5 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; *telephone:* (317) 232–5336; *e-mail: TSeeman@indot.IN.gov.* Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: On August 13, 2010, the FHWA published a "Notice of Final Federal Agency Actions on Proposed Highway in Indiana" in the **Federal Register** at (75 FR 49547) for the Section 3, 25.73 mile I–69 project in Daviess and Greene Counties. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as Section 404 Water Quality Permit, Number LRL–2010–39-djd. That information is available by contacting the USACE at the address provided above.

As part of the Section 3 project, which begins at the terminus of the Section 2 project, there are six crossings of water resources requiring individual permits from the USACE, including streams, open water and emergent, scrub-shrub and forested wetlands. Subject to the permit conditions, INDOT is permitted to discharge fill material below the Ordinary Highway Water mark of 8,925 linear feet of Doan's Creek and intermittent and ephemeral tributaries of Eagan Ditch and Doan's Creek, and to discharge fill material into 4.64 acres of open water and emergent, scrub-shrub and forested wetlands adjacent to First Creek and Doan's Creek in constructing these crossings. In addition, in two letters dated January 20, 2010 and May 4, 2010, the USACE has authorized impacts at 32 other sites under their jurisdiction within Section 3 of the I–69 project in Daviess and Greene Counties via the Regional General Permit No. 1 issued jointly by the Louisville and Chicago Districts on December 15, 2009.

On January 7, 2010, INDOT filed an application with the USACE for authorization under Section 404 of the Clean Water Act, 33 U.S.C. 1344, to construct the 25.73 mile Section 3 I–69 project. On July 14, 2010, the USACE took final action in issuing the Section 404 Water Quality Permit for the Section 3 I–69 project, Number LRL–2010–39-djd, as described in the USACE decision and its administrative record for the project. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA, United States Fish and Wildlife Service (USFWS), DOI, and USACE was published in the **Federal Register** on August 13, 2010 (75 FR 49547). On September 7, 2010, the USACE suspended the Section 404 Water Quality Permit, Number LRL–2010–39-djd, after a review of the permit file revealed that the procedural requirements of 33 CFR 327.4, the USACE regulation regarding public hearing determinations, had not been followed prior to issuance of the permit. On September 15, 2010, after ensuring

that all necessary procedural requirements had been complied with, the USACE reinstated the Section 404 Water Quality Permit, Number LRL–2010–39-djd.

The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Section 404 Water Quality Permit and Regional General Permit letters, and in other documents in the FHWA administrative record for the project. The ROD and other documents from the FHWA administrative record files for the Section 3 project are available by contacting FHWA, USACE or INDOT at the addresses provided above. Project information may also be available through the INDOT I–69 Project Web site at *http://www.i69indyevn.org/.*

This notice applies to all USACE and other Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to: 1. 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]. 2. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 3. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 402, Section 401, Section 319).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 19, 2010.

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. 2010–29805 Filed 11–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Meeting

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of Motor Carrier Safety Advisory Committee Meeting.

SUMMARY: FMCSA announces that the Agency's Motor Carrier Safety Advisory Committee (MCSAC) will hold a committee meeting from Monday, December 6 through Wednesday, December 8, 2010. The meeting will be open to the public for its duration.

TIME AND DATES: The meeting will be held on Monday and Tuesday, December 6–7, 2010, from 8:30 a.m. to 4 p.m., Eastern Standard Time (E.S.T.), and on Wednesday, December 8, from 8:30 a.m. to 2 p.m., E.S.T. The last hour of each day will be reserved for public comment.

MATTERS TO BE CONSIDERED: The MCSAC will complete action on Task 10–02, regarding Fatigue Management Plans for Commercial Motor Vehicle Drivers. Additionally, the MCSAC will commence work on Task 11–01, regarding Patterns of Safety Violations by Motor Carrier Management.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Management Analyst, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee. The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2).

Patterns of Safety Violations Task

SAFETEA–LU Section 4133 allows the Secretary to suspend, amend, or revoke any part of a motor carrier's registration if the Secretary finds that an officer of a motor carrier engages, or has engaged, in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, while serving as an officer of any motor carrier. The section defines an officer as "an owner, director, chief executive officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of title attached to these functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier."

Following presentations from experts on this issue and the deliberations of the Committee, the MCSAC will submit written recommendations in the form of a report to the FMCSA Administrator on this topic following its March 2011 meeting.

II. Meeting Participation

Oral comments from the public will be heard during the last hour of each day of this meeting. Members of the public may submit written comments on this topic by Wednesday, December 1, 2010, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room WI2–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room WI2–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued on: November 22, 2010.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2010–29767 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0354]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 46 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before December 27, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0354 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 46 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Charles H. Akers, Jr.

Mr. Akers, age 59, has had complete loss of vision in his right eye since 1974 due to trauma. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "It is my opinion that he has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle without restrictions." Mr. Akers reported that he has driven straight trucks for 38 years, accumulating 152,000 miles and tractor-trailer combinations for 38 years, accumulating 456,000 miles. He holds a Class A Commercial Driver's License (CDL) from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David B. Albers, Sr.

Mr. Albers, 38, has had complete loss of vision in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, David has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Albers reported that he has driven straight trucks for 5½; years, accumulating 605,000 miles and tractor-trailer combinations for 5½; years, accumulating 605,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kurtis A. Anderson

Mr. Anderson, 37, has had complete loss of vision in his left eye since birth. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Kurt Anderson has sufficient vision to perform the driving tasks to operate a commercial motor vehicle." Mr. Anderson reported that he has driven straight trucks for 3 years, accumulating 78,000 miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry L. Anderson

Mr. Anderson, 43, had a tear in the macular of the retina in his left eye many years ago. Following an examination in 2010, his optometrist noted, "the best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80." Mr. Anderson reported that he has driven straight trucks for 2 years, accumulating 40,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; failure to obey a traffic signal.

Grover H. Baelz

Mr. Baelz, 63, has had cataracts in both eyes since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision only. Following an examination in 2010, his optometrist noted, "In summary, Mr. Baelz has a normal well functioning right eye with no detectable visual defects and in my opinion has sufficient vision abilities to operate a commercial vehicle." Mr. Baelz reported that he has driven straight trucks for 42 years, accumulating 924,000 miles. He holds a Class C operator's license from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Sammy J. Barada

Mr. Barada, 60, has had complete loss of vision in his right eye since birth. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Barada reported that he has driven straight trucks for 10 years, accumulating 950,000 miles and tractor-trailer combinations for 2 years, accumulating 15,000 miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no

crashes and no convictions for moving violations in a CMV.

Kenneth L. Bowers, Jr.

Mr. Bowers, 41, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/40 and in his left eye, 20/80. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Bowers can safely perform tasks required to operate a motor vehicle." Mr. Bowers reported that he has driven straight trucks for 25 years, accumulating 13,750 miles and tractor-trailer combinations for 7 years, accumulating 140,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy Bradford

Mr. Bradford, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Timothy Bradford has sufficient vision to safely perform the driving tasks necessary to operate a commercial vehicle." Mr. Bradford reported that he has driven straight trucks for 39 years, accumulating 780,000 miles and tractor-trailer combinations for 16 years, accumulating 16,000 miles and buses for 13 years, accumulating 130,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald G. Brock, Jr.

Mr. Brock, 49, has had intermittent alternating extropia with mild strabismic amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "My opinion is that Mr. Brock is capable of safely operating a commercial vehicle and poses the same risk for accidents as someone with normal binocular function." Mr. Brock reported that he has driven straight trucks for 1 year, accumulating 1,000 miles and tractor-trailer combinations for 18 years, accumulating 1 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony D. Buck

Mr. Buck, 26, has had complete loss of vision in his right eye since 1997. The best corrected visual acuity in his right eye is no light perception, and in his left eye is 20/15. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Anthony has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Buck reported that he has driven tractor-trailer combinations for 7 years, accumulating 595,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cody W. Cook

Mr. Cook, 26, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I feel Cody is capable of performing tasks to operate a commercial vehicle." Mr. Cook reported that he has driven straight trucks for 9 years, accumulating 315,000 miles and tractor-trailer combinations for 9 years, accumulating 180,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marvin R. Daly

Mr. Daly, 45, has had a prosthetic left eye since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Daly has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Daly reported that he has driven straight trucks for 1 year, accumulating 20,000 miles and tractor-trailer combinations for 1 year, accumulating 40,000 miles and buses for 7 years, accumulating 210,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas R. Duncan

Mr. Duncan, 58, has had a prosthetic left eye since 1983. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "In my opinion, the patient should have sufficient vision to operate a commercial vehicle despite the fact that he is one-eyed." Mr. Duncan reported that he has driven straight trucks for 12 years, accumulating 600,000 miles and tractor-trailer combinations for 24 years, accumulating 3 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas K. Esp

Mr. Esp, 55, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mr. Esp performs well with his current visual status and should experience no visual deficiency while operating a commercial vehicle." Mr. Esp reported that he has driven straight trucks for 30 years, accumulating 300,000 miles and tractor-trailer combinations for 30 years, accumulating 2.1 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger C. Evans, II

Mr. Evans, 62, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Evans has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Evans reported that he has driven buses for 12 years, accumulating 564,000 miles. He holds a Class D operator's license from Wisconsin. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Jevont D. Fells

Mr. Fells, 39, has had keratoconus in his left eye since 1994. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2010, his optometrist noted, "In my medical opinion, I hereby state that Mr. Fells is legal to drive with glasses under any conditions." Mr. Fells reported that he has driven straight trucks for 10 years, accumulating 1 million miles and tractor-trailer combinations for 4 years, accumulating 250,000 miles. He holds a Class A operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven C. Fox

Mr. Fox, 47, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision only, and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my

medical opinion this patient has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Fox reported that he has driven straight trucks for 9 years, accumulating 225,000 miles and tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott C. Geiter

Mr. Geiter, 42, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in his left eye, count-finger vision. Following an examination in 2010, his optometrist noted, "Mr. Scott Geiter has sufficient vision to perform the driving task required to operate a commercial vehicle." Mr. Geiter reported that he has driven straight trucks for 11 years, accumulating 880,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary A. Golson

Mr. Golson, 48, has a prosthetic left eye due to a motor vehicle accident that occurred twenty-five years ago. The visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Golson has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Golson reported that he has driven straight trucks for 6 years, accumulating 172,368 miles and tractor-trailer combinations for 1 year, accumulating 10,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald L. Hamrick

Mr. Hamrick, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2010, his optometrist noted, "In my medical opinion, Don Hamrick has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hamrick reported that he has driven tractor-trailer combinations for 14 years, accumulating 560,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eugene W. Harnisch

Mr. Harnisch, 59, has had complete loss of vision in his right eye due to a traumatic injury in 1964. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "While Eugene has suffered traumatic blindness of his right eye his visual field examination and function of his left eye is completely within normal limits and in my opinion should have sufficient vision for performing the tasks required to operate a commercial vehicle." Mr. Harnisch reported that he has driven straight trucks for 33 years, accumulating 660,000 miles and tractor-trailer combinations for 5 years, accumulating 200,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronnie E. Henderson

Mr. Henderson, 64, has had loss of vision in his left eye since 2007. The best corrected visual acuity in his right eye is 20/20, and in his left eye, hand-motion vision only. Following an examination in 2010, his ophthalmologist noted, "I believe Mr. Henderson's visual function is adequate to operate any type of commercial vehicle." Mr. Henderson reported that he has driven straight trucks for 43 years, accumulating 786,685 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clinton L. Hines, Jr.

Mr. Hines, 48, has had an injury to his right eye since 1984. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "He currently has sufficient vision to operate a commercial vehicle." Mr. Hines reported that he has driven straight trucks for 32 years, accumulating 160,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steve D. James

Mr. James, 55, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion the patient does have stable visual acuity and sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. James reported that he has driven straight trucks for 3 years, accumulating 1.2 million miles and buses for 2 years, accumulating 17,332 miles. He holds a Class C operator's license from North Carolina. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Matthew C. Kalebaugh

Mr. Kalebaugh, 51, has had macular scar in his right eye since 2005. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "It is my opinion Mr. Kalebaugh has adequate vision to operate a commercial vehicle and has learned to compensate for the vision loss in the right eye." Mr. Kalebaugh reported that he has driven straight trucks for 32 years, accumulating 320,000 miles and tractor-trailer combinations for 28 years, accumulating 2.8 million miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith A. Larson

Mr. Larson, 50, has had complete loss of vision in his left eye due to trauma 10 years ago. The visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "He has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Larson reported that he has driven straight trucks for 20 years, accumulating 440,000 miles. He holds a Class D operator's license from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brent E. Lewis

Mr. Lewis, 29, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I am of the opinion that Mr. Lewis sees and functions very adequately with respect to operating motor vehicles, and should be allowed to drive commercial vehicles." Mr. Lewis reported that he has driven tractor-trailer combinations for 6 years, accumulating 120,000 miles. He holds a Class D operator's license from Mississippi. His driving record for the last 3 years shows no crashes and no

convictions for moving violations in a CMV.

Timothy R. McCullough

Mr. McCullough, 46, has had complete loss of vision in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "As stated in my earlier letter which you accidentally erased but I've enclosed a copy, I feel that Mr. McCullough has sufficient vision to safely operate a commercial vehicle, in my professional opinion." Mr. McCullough reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.7 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marcus McMillin

Mr. McMillin, 39, has had esotropia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion this patient has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. McMillin reported that he has driven tractor-trailer combinations for 8 years, accumulating 1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George C. Milks

Mr. Milks, 49, has had a cataract in his right eye since 1995. The best corrected visual acuity in his right eye is light perception only and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "In my medical opinion Mr. Milks has sufficient vision to operate a commercial vehicle." Mr. Milks reported that he has driven straight trucks for 11 years, accumulating 99,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Daniel R. Murphy

Mr. Murphy, 46, has had complete loss of vision in his left eye since childhood. The visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Lewis reported that he has driven buses for 9 years, accumulating 11,250 miles. He holds a Class B CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph M. Palmer

Mr. Palmer, 56, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mr. Palmer has sufficient visual acuities and peripheral range of vision in both eyes to safely operate a commercial vehicle." Mr. Palmer reported that he has driven straight trucks for 34 years, accumulating 595,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Garrick D. Pitts

Mr. Pitts, 36, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Based upon my professional medical opinion and considering his driving record over the past several years, I feel Mr. Pitts has sufficient vision to operate a commercial motor vehicle." Mr. Pitts reported that he has driven straight trucks for 9 years, accumulating 1 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary W. Robey

Mr. Robey, 67, has had macular degeneration in his right eye since 2006. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Patient is able to operate a commercial vehicle from a vision perspective in my opinion." Mr. Robey reported that he has driven tractor-trailer combinations for 40 years, accumulating 4 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Jonathan C. Rollings

Mr. Rollings, 35, has had a prosthetic left eye since he was the age of 15. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2010, his optometrist noted, "Jon has sufficient vision to satisfy all of the requirements to operate a commercial vehicle." Mr. Rollings reported that he has driven straight trucks for 12 years, accumulating 240,000 miles and tractor-trailer combinations for 12 years, accumulating 144,000. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit.

Preston S. Salisbury

Mr. Salisbury, 43, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is my professional opinion that Mr. Salisbury has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Salisbury reported that he has driven straight trucks for 15 years, accumulating 3,000 miles and tractor-trailer combinations for 6 years, accumulating 15,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Victor M. Santana

Mr. Santana, 45, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "My medical opinion, Mr. Victor Santana has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Santana reported that he has driven tractor-trailer combinations for 20½ years, accumulating 3 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 9 mph.

Kevin W. Schaffer

Mr. Schaffer, 48, has had retinal detachment in his left eye since the age of 24. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion Kevin has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Schaffer reported that he has driven straight trucks for 32 years, accumulating 400,000 miles and tractor-trailer combinations for 10 years, accumulating 75,000. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and

no convictions for moving violations in a CMV.

Gerald E. Skalitzky

Mr. Skalitzky, 68, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I hereby certify that Gerald Skalitzky has sufficient vision to perform all commercial vehicle driving tasks." Mr. Skalitzky reported that he has driven straight trucks for 40 years, accumulating 1.1 million miles and tractor-trailer combinations for 2 years, accumulating 100,000 miles. He holds a Class D operator's license from Wisconsin. His driving record for the last 3 years shows one crash, for which he was cited, and two convictions for moving violations in a CMV. In the first incident, he failed to obey a traffic signal. In the second incident, he was following another vehicle too closely.

Allen W. Smith

Mr. Smith, 36, has had corneal scarring in his left eye since birth. The visual acuity in his right eye is 20/20 and in his left eye, no light perception. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Smith has sufficient vision to operate a commercial vehicle." Mr. Smith reported that he has driven straight trucks for 12 years, accumulating 300,000 miles and tractor-trailer combinations for 2 years, accumulating 30,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert B. Steinmetz

Mr. Steinmetz, 57, has had complete loss of vision in his right eye since 1995. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, you have sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Steinmetz reported that he has driven straight trucks for 30 years, accumulating 150,000 miles and tractor-trailer combinations for 28 years, accumulating 280,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George A. Teti

Mr. Teti, 69, has had a large posterior staphyloma in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "This letter certifies that Mr. Teti meets the visual requirements to perform all driving tasks needed to operate a commercial vehicle." Mr. Teti reported that he has driven straight trucks for 2 years, accumulating 24,000 miles and buses for 24 years, accumulating 240,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin J. Wallace, II

Mr. Wallace, 56, has had macular scarring in his left eye since 2000. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision only. Following an examination in 2010, his ophthalmologist noted, "In my opinion he has sufficient vision to perform as a commercial driver." Mr. Wallace reported that he has driven straight trucks for 10 years, accumulating 1.2 million miles, and tractor-trailer combinations for 15 years, accumulating 2.7 million miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David W. Ward

Mr. Ward, 49, has had a prosthetic left eye since 1981. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Ward has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ward reported that he has driven tractor-trailer combinations for 5 years, accumulating 350,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ralph W. York

Mr. York, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my professional opinion, Ralph York has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. York reported that he has driven tractor-trailer combinations for 31 years, accumulating 4.6 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 7 mph.

Richard L. Zacher

Mr. Zacher, 53, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "And yes, both Dr. Reski and I do agree and believe that Mr. Zacher has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Zacher reported that he has driven straight trucks for 14 years, accumulation 499,996 miles and tractor-trailer combinations for 21 years, accumulating 1.4 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 27, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 10, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–29797 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0231]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement

in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on September 23, 2010 (75 FR 52063).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 15 renewal applications, FMCSA renews the Federal vision exemptions for William C. Ball, Terrence L. Benning, Robert S. Bowen, Dennis R. Buszkiewicz, Larry Byrley, Eldon D. Cochran, James R. Corley, Alfred A. Constantino, Larry D. Curry, Kelly M. Greene, John H. Holmberg, Garry R. Lomen, Leonardo Lopez, Jr., James A. Rapp and Thomas P. Shank.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 18, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–29802 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7006; FMCSA–7165; FMCSA–2002–12294; FMCSA–2004–17194; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2008–0174]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 37 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on September 23, 2010 (75 FR 52061).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 37 renewal applications, FMCSA renews the Federal vision exemptions for John W. Arnold, Derric D. Burrell, Jack D. Clodfelter, Tommy J. Cross, Jr., Stephen R. Daugherty, Eric L. Dawson, III, Richard L. Derick, Craig E. Dorrance, Joseph A. Dunlap, Calvin J. Eldridge, Shawn B. Gaston, James F. Gereau, Eric M. Giddens, Sr., Ronald E. Goad, Esteban G. Gonzalez, Reginald I. Hall, Gary J. Hambrick, James O. Hancock, Sherman W. Hawk, Jr., Lance G. James, Robert C. Jeffres, Alfred C. Jewell, Jr., Leslie A. Landschoot, John C. Lewis, Lewis V. McNeice, Kevin J. O'Donnell, Gregory M. Preves, James M. Rafferty, Paul C. Reagle, Sr., Daniel Salinas, Lee R. Sidwell, David L. Slack, David M. Smith, James C. Smith, Roger R. Strehl, Jeffrey D. Smith and Richard A. Yeager.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 18, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–29809 Filed 11–24–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35445]

Louisville & Indiana Railroad Company—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written trackage rights agreement dated October 8, 2010, CSX Transportation, Inc. (CSXT) has agreed to grant nonexclusive overhead trackage rights to Louisville & Indiana Railroad Company (L&I) over CSXT's lines of railroad as follows: (1) on CSXT's Louisville Secondary, extending between the point of connection with CSXT's trackage and L&I's trackage at CSXT milepost QSL 4.0 and between the point of connection with CSXT's Louisville Secondary with CSXT's Indianapolis Terminal Subdivision at

CP IU via Meridian Wye at milepost QSL 0.0, a distance of 4.0 miles, then via either: (a) CSXT's Indianapolis Terminal Subdivision extending between milepost QI 283.9 at CP IU and milepost QS 12.5 at CP AN at the west end of Avon Yard, a distance of approximately 12.5 miles; or (b)(i) CSXT's Indianapolis Terminal Subdivision extending between milepost QI 283.9 at CP IU and milepost QS 0.9 at CP IJ, (ii) the Crawfordsville Branch extending between milepost QSC 0.7 at CP IJ and milepost QSC 8.6 at CP South Hunt and, (iii) CXST's Indianapolis Terminal Subdivision extending between milepost QS 7.8 at South Hunt and milepost QS 12.5 at CP AN at the west end of Avon Yard, a distance of approximately 13.5 miles; and (2) CSXT's Louisville Secondary extending between milepost QSL 4.0 and the point of connection with the Indianapolis Belt Subdivision via Dale southeast wye or Dale northeast wye at milepost QSL 1.7, a distance of 2.3 miles, then via either CSXT's: (a)(i) Indianapolis Belt Subdivision extending between milepost QIB 5.9 at Dale and milepost QIB 3.2 at CP Woods; (ii) Crawfordsville Branch extending between milepost QSC 1.6 at CP Woods and milepost QSC 8.6 at South Hunt; and (iii) Indianapolis Terminal Subdivision extending between milepost QS 7.8 at South Hunt and milepost QS 12.5 at CP AN at the west end of Avon Yard, a distance of approximately 14.6 miles; or (b)(i) Indianapolis Belt Subdivision extending between milepost QIB 5.9 at Dale and milepost QIB 2.9 at CP 1; and (ii) Indianapolis Terminal Subdivision extending between milepost QS 1.6 at CP 1 and milepost QS 12.5 at CP AN at the west end of Avon Yard, a distance of approximately 13.9 miles.[1] The trackage rights include Avon Yard trackage as designated by the CSXT Avon Yardmaster at the time of each movement.

The transaction is expected to be consummated on or after December 12, 2010, 30 days after the exemption was filed. The purpose of the trackage rights agreement is to facilitate L&I' s movement of certain traffic for the account of the Indiana Rail Road Company in an efficient and safe manner.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the 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. Stay petitions must be filed by December 3, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35445, 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 Troy W. Garris, Weiner Brodsky Sidman Kider PC, 2904 Corporate Cir., Flower Mound, TX 75028.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 19, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–29740 Filed 11–24–10; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted, executed trackage rights agreement between CSXT and L&I was filed with the notice of exemption. The unredacted version, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Community Reinvestment Act

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 27, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov*, or call (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Community Reinvestment Act.

OMB Number: 1550–0012.

Form Number: N/A.

Description: The Community Reinvestment Act regulation requires the OTS, as well as the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies), to evaluate and assign ratings to the efforts of institutions to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. OTS uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Further, the CRA statute requires the Agencies to issue regulations to carry out its purposes.

OTS uses the data collected under the CRA regulations to fulfill its obligations under the statute, including the assessment of each institution's record of helping to meet the credit needs of its entire community. OTS uses the data to support its conclusions regarding an institution's record of performance, in assigning a rating, and in preparing the written public evaluations that the statute requires when an institution is examined. Additionally, judgments based on these data are used in evaluating an institution's applications for mergers, branches, and other corporate activities. The public uses this information to assess independently the institution's CRA performance and to participate meaningfully in the application process.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 753.

Estimated Frequency of Response: Annually; On occasion.

Estimated Total Burden: 67,210 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: November 19, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–29682 Filed 11–24–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Survey of Information Sharing Practices With Affiliates

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before January 25, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Suzanne McQueen at (202) 906–6459, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Survey of Information Sharing Practices with Affiliates.

OMB Number: 1550–0121.

Form Number: N/A.

Description: The OTS, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, and the National Credit Union Administration, (Agencies), are required jointly to submit a report to the Congress together with any recommendations for legislative or regulatory action, pursuant to Section 214(e) of the Fair and Accurate Transactions Act of 2003 Public Law 108–159, 117 Stat. 1952. The Agencies will gather information by means of a Survey to be completed by financial institutions and other persons that are creditors or users of consumer reports. The Agencies will use the Survey responses to prepare a report to Congress on the information sharing practices by financial institutions, creditors, or users of consumer reports with their affiliates.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 22.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 220 hours.

Dated: November 19, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–29683 Filed 11–24–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Transitional Housing Facility on a 1-Acre Parcel at the George E. Wahlen VA Medical Center (VAMC) in Salt Lake City, UT

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of VA intends to enter into an EUL on a 1-acre parcel of land at the George E. Wahlen VAMC in Salt Lake City, Utah. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to build, operate, and maintain a transitional housing facility; provide preference and priority placement for homeless Veterans and Veterans at risk of homelessness; and provide a

supportive services program that guides resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–29750 Filed 11–24–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on December 13–14, 2010, at the St. Regis Hotel, 923 16th Street, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon each day. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation and Pension Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Robert.Watkins2@va,gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214.

Dated: November 22, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–29745 Filed 11–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on December 13–14, 2010, at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA, from 9 a.m. to 5 p.m. each day. Various subcommittees of the Board will meet to evaluate Center of Excellence and Research Enhancement Award Program applications. Each subcommittee meeting of the Board will be open to the public the first day for approximately one hour from 9 a.m. to 10 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the applications and critiques.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

During the meetings, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

For further information, please contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, Department of Veterans Affairs (122P), 810 Vermont Avenue, NW., Washington, DC 20420, or phone at (202) 461–1740 or e-mail at *tiffany.asqueri@va.gov*.

Dated: November 22, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–29758 Filed 11–24–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice updates the VA Performance Review Board of the Department of Veterans Affairs that was published in the **Federal Register** on October 16, 2009 (Vol. 74, No. 199).

DATES: *Effective Date:* November 26, 2010.

FOR FURTHER INFORMATION CONTACT: Dadrian Brown, Human Resources Specialist, Corporate Senior Executive Management Office (006E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7078.

VA Performance Review Board (PRB)

Primary Board Members

John U. Sepúlveda, Assistant Secretary for Human Resources and Administration (Chairperson).

Fernando Rivera, Acting Network Director, VISN 5.

Michael Cardarelli, Acting Deputy Under Secretary for Benefits.
Paul Hutter, Chief of Staff, Veterans Health Administration.
Robert L. Neary, Associate Chief Facilities Management Officer for Service Delivery, Office of Acquisition, Logistics and Construction.
Will A. Gunn, General Counsel.
William T. Grams, Acting Assistant Secretary for Management.
Martha Orr, Executive Director, Quality, Performance, and Oversight, Office of Information and Technology.
Raul Perea-Henze, Assistant Secretary for Policy and Planning.
Tonya M. Deanes, Deputy Assistant Secretary, Office of Human Resources Management.
Patricia C. Adams, Deputy Assistant Secretary of the Navy, Civilian Human Resources.

Alternate Board Members

Deborah McCallum, Assistant General Counsel.
Diana Rubens, Associate Deputy Under Secretary for Field Operations, VBA.
Madhulika Agarwal, Chief Officer, Patient Care Services, VHA.
Rose K. Quicker, Associate Chief Facilities Management Officer for Resource Management, Office of Acquisition, Logistics and Construction.
Walter Hall, Assistant General Counsel.
James Sullivan, Director, Office of Asset and Enterprise Management, Office of Management.
Rom Mascetti, Deputy Assistant Secretary for Resource Management, Office of Information and Technology.
Dat Tran, Director, National Center for Veterans Analysis and Statistics, Office of Policy and Planning.

Dated: November 16, 2010.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2010–29696 Filed 11–24–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act Of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to systems of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending two existing systems of records 121VA19, "National Patient Databases—VA", and 136VA19E, "Library Network (VALNET)—VA" to: Add a routine use relating to releasing information to agencies in the event of fraud or abuse. VA is also amending the 121VA19 system of records by amending the routine use relating to releasing information to the General Services Administration and the revision of Appendix 4 is being amended for additional databases.

DATES: Comments on the amendment of these systems of records must be received no later than December 27, 2010. If no public comment is received, the amended system will become effective December 27, 2010.

ADDRESSES: Written comments may be submitted through *www.Regulation.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: VA provides health care services to many of America's Veterans through the Veterans Health Administration. During the course of providing health care, VHA collects medical and health information on Veterans. In order to protect Veteran's medical or health information VHA is adding one routine use and amending one routine use to one existing system of records (121VA19) and one routine use to one other existing system of records (136VA19E).

Additional Routine Uses

The routine use added to 121VA19 and 136VA19E would permit VA to disclose information to other Federal agencies which may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

The routine use added to these two systems of records would permit disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

The routine use being amended to 121VA19 would permit VA to disclose information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.). NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal Government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

Appendix 4 has been amended to include Defense and Veterans Eye Injury Registry (DVEIR)—VA Service-Related Eye Injury Data Store, Embedded Fragment Registry (EFR), The Electronic Surveillance System for the Early Notification of Community-Based Epidemics (ESSENCE), Veterans Informatics, Information and Computing Infrastructure (VINCI), and Dental Encounter System.

The Report of Intent to Amend these Systems of Records Notice and an advance copy of the systems notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: November 3, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment of Systems of Records

1. In the system identified as 121VA19, "National Patient Databases—VA," as set forth in the **Federal Register**, 73 FR 16103, and last amended in the **Federal Register** on March 26, 2008. One new routine use is added as follows:

121VA19

SYSTEM NAME: "NATIONAL PATIENT DATABASES—VA".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

4. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management inspections under authority of Title 44, Chapter 29, of the United States Code.

23. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

2. In the system identified as 136VA19E, "Library Network (VALNET)—VA," as set forth in the **Federal Register** 73 FR 55214 dated September 24, 2008. One new routine use is added as follows:

136VA19E

SYSTEM NAME: "LIBRARY NETWORK (VALNET)—VA"

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

15. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

VA APPENDIX 4

Database name	Location
Addiction Severity Index	Veterans Affairs Medical Center 7180 Highland Drive Pittsburgh, Pennsylvania 15206.
Bidirectional Health Information Exchange	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Cardiac Assessment Tracking and Reporting for Cardiac Catheterization Laboratories.	Denver VA Medical Center 1055 Clermont Street Denver, Colorado 80220.
Care Management Information System	Veterans Affairs Medical Center University and Woodland Aves. Philadelphia, Pennsylvania 19104.
Clinical Case Registries	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
CMOP Centralized Database System	Southwest CMOP 3675 East Britannia Drive Tucson, Arizona 85706.
Continuous Improvement in Cardiac Surgery	Veterans Affairs Medical Center 820 Clermont Street Denver, Colorado 80220.
Corporate Data Warehouse	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Cruetzfelet-Jakob Disease Lookback Dataset	Cincinnati VA Medical Center 3200 Vine Street Cincinnati, Ohio 45220.
Decision Support System	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Defense and Veterans Eye Injury Registry (DVEIR)—VA Service-Related Eye Injury Data Store.	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Dental Encounter System	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Eastern Pacemaker Surveillance Center Database	Veterans Affairs Medical Center 50 Irving Street, NW Washington, DC 20422.
Embedded Fragment Registry (EFR)	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Emerging Pathogens Initiative	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
The Electronic Surveillance System for the Early Notification of Community-Based Epidemics (ESSENCE).	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Federal Health Information Exchange	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Financial Clinical Data Mart	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Former Prisoner of War Statistical Tracking System	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.

VA APPENDIX 4—Continued

Database name	Location
Functional Status and Outcome Database	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Home Based Primary Care	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Mammography Quality Standards VA	Veterans Affairs Medical Center 508 Fulton Street Durham, North Carolina 27705.
Master Patient Index	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Medical SAS File (MDP) (Medical District Planning (MEDIPRO))	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Missing Patient Register	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
National Mental Health Database System	Veterans Affairs Medical Center 7180 Highland Drive Pittsburgh, Pennsylvania 15206.
National Medical Information System	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
National Survey of Veterans	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Office of Quality and Performance (OQP)	(OQP) Data Center 601 Keystone Park Dr Suite 800 Morrisville, North Carolina 27560.
Parkinson's Disease Research, Education and Clinical Centers Registry.	Veterans Affairs Medical Center 4150 Clement Street San Francisco, California 94121.
Patient Assessment File	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Pharmacy Benefits Management	Veterans Affairs Medical Center 5th Avenue and Roosevelt Road Hines, Illinois 60141.
Radiation Exposure Inquiries Database	Office of Information Field Office 1335 East West Highway Silver Spring, Maryland 20910.
Remote Order Entry System	Denver Distribution Center 155 Van Gordon Street Lakewood, Colorado 80228–1709.
Resident Assessment Instrument/Minimum Data Set	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Short Form Health Survey for Veterans	Veterans Affairs Medical Center 200 Springs Road Bedford, Massachusetts 01730.
VA National Clozapine Registry	Veterans Affairs Medical Center 4500 S. Lancaster Road Dallas, Texas 75216.
VA Vital Status File	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Veterans Administration Central Cancer Registry	Veterans Affairs Medical Center 50 Irving Street, NW Washington, DC 20422.
Veterans Informatics, Information and Computing Infrastructure (VINCI)	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.
Veterans Integrated Service Network Support Service Center Databases.	Austin Information Technology Center 1615 Woodward Street Austin, Texas 78772.

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November 26, 2010

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191, 192, 193 et al.

Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR 191, 192, 193 and 195

[Docket No. PHMSA–2008–0291; Amdt. Nos. 191–21; 192–115; 193–23; and 195–95]

RIN 2137–AE33

Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule revises the Pipeline Safety Regulations to improve the reliability and utility of data collections from operators of natural gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. These revisions will enhance PHMSA's ability to understand, measure, and assess the performance of individual operators and industry as a whole; integrate pipeline safety data to allow a more thorough, rigorous, and comprehensive understanding and assessment of risk; and expand and simplify existing electronic reporting by operators. These revisions will improve both the data and the analyses PHMSA and others rely on to make critical, safety-related decisions, and will facilitate both PHMSA's and states' allocation of pipeline safety program inspection and other resources based on a more accurate accounting of risk.

DATES: This final rule is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569 or by electronic mail at *roger.little@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2009, (74 FR 31675) PHMSA published a Notice of Proposed Rulemaking proposing to revise the Pipeline Safety Regulations (49 CFR Parts 190–199) to improve the reliability and utility of data collections from operators of natural gas pipelines, hazardous liquid pipelines, and LNG facilities. Specifically, PHMSA proposed the following amendments to the regulations:

1. Modify 49 CFR 191.1 to reflect the changes made to the definition of gas gathering lines in Part 192.
2. Change the definition of an "incident" in 49 CFR 191.3 to require an operator to report an explosion or fire not intentionally set by the operator and to establish a volumetric basis for reporting unexpected or unintentional gas loss.
3. Require operators to report and file data electronically whenever possible.
4. Require operators of LNG facilities to submit incident and annual reports.
5. Create and require participation in a National Registry of Pipeline and LNG Operators.
6. Require operators to use a standard form in electronically submitting Safety-Related Condition Reports and Offshore Pipeline Condition Reports.
7. Merge the natural gas transmission IM Semi-Annual Performance Measures Report with the annual reports. Revise the leak cause categories listed in the annual report to include those nine categories listed in ASME B31.8S. Expand information on the natural gas transmission annual report to add information for miles of gathering lines by Type A and Type B gathering, class location information by specified minimum yield strength (SMYS), volume of commodity transported, and type of commodity transported.
8. Modify hazardous liquid operator telephonic notification of accidents to require operators to have and use a procedure to calculate and report a reasonable initial estimate of released product and to provide an additional telephonic report to the NRC if significant new information becomes available during the emergency response phase.
9. Require operators of hazardous liquid pipelines to submit pipeline information by state on the annual report for hazardous liquid pipelines.
10. Remove obsolete provisions that would conflict with the proposal to require electronic submission of all reports.
11. Update Office of Management and Budget (OMB) control numbers assigned to information collections.

The statutory authority under 49 U.S.C. 60101 *et seq.* authorizes this final rule; these Federal Pipeline Safety Laws grant broad authority to PHMSA to regulate pipeline safety. The proposed data collection and filing requirement revisions are wholly consistent with Section 15 of the PIPES Act of 2006 (Pub. L. 109–468, December 26, 2006), which requires PHMSA to review and modify the incident reporting criteria as appropriate to ensure that the data accurately reflects trends over time.

For natural gas pipeline operators, specific reporting requirements in 49 CFR Part 191 are found at:

- § 191.5 Telephonic notice of certain incidents.
- § 191.7 Addresses for written reports.
- § 191.9 Natural gas distribution incident report.
- § 191.11 Natural gas distribution annual report.
- § 191.15 Natural gas transmission and gathering incident report.
- § 191.17 Natural gas transmission and gathering annual report.
- § 191.23 Reporting safety-related conditions.
- § 191.25 Filing safety-related condition reports.
- § 191.27 Filing offshore pipeline condition reports.

The requirement for reporting leaks and spills of LNG in accordance with Part 191 is found at § 193.2011. Part 191 has excluded LNG from many of the reporting requirements.

For hazardous liquid pipeline operators specific reporting requirements in 49 CFR Part 195 are found at:

- § 195.48 Scope.
- § 195.49 Annual report.
- § 195.50 Reporting accidents.
- § 195.52 Telephonic notice of certain accidents.
- § 195.54 Accident reports.
- § 195.55 Reporting safety-related conditions.
- § 195.56 Filing safety-related condition reports.
- § 195.57 Filing offshore pipeline condition reports.
- § 195.58 Address for written reports.

As the Nation's repository for pipeline data, PHMSA's data is used not only by PHMSA, but by state pipeline safety programs, congressional committees, metropolitan planners, civic associations and other local community groups, pipeline research organizations, industry safety experts, industry watch groups, the media, the public, industry trade association, industry consultants, and members of the pipeline and energy industries. A significant amount of critical safety information is cultivated from PHMSA's data through statistical analysis and information retrieval. One of the agency's most valued assets is the data it collects, maintains, and analyzes pertaining to the industry. PHMSA is responsible for maintaining the most comprehensive collection of accident/incident data for intrastate and interstate pipelines in the country. PHMSA is subject to continual interest and scrutiny by numerous and varied stakeholders for the reliability, utility, and applicability of information and statistics pertaining to pipelines and LNG facilities, including the collection, tracking, and retrieval of historical data. PHMSA, therefore, must periodically

modify its information and data collections and associated processes to address changes in industry business practices, changes in PHMSA's regulations, and changes in PHMSA's own data analysis strategies and objectives.

This rule also responds to various Government Accountability Office (GAO) and National Transportation Safety Board (NTSB) recommendations. In GAO's report titled: "Natural Gas Pipeline Safety: IM Benefits Public Safety, but Consistency of Performance Measure Should Be Improved," (GAO–06–946, September, 2006), GAO stated that the current gas incident reporting requirements do not adjust for the changing cost of gas released in incidents. GAO recommended that PHMSA "revise the definition of a reportable incident to consider changes in the price of natural gas." In the same report, GAO also recommended PHMSA revise reporting of performance measures for the IM programs to measure the impact of the program. GAO recommended that PHMSA improve the measures related to incidents, leaks, and failures to compare performance over time and make the measures more consistent with other pipeline safety measures.

The NTSB recommended that PHMSA modify 49 CFR 195.52 of the hazardous liquid pipeline regulations to require pipeline operators to have a procedure to calculate and provide a reasonable initial estimate of released product in their telephonic reports to the NRC (NTSB Safety Recommendation P–07–07). NTSB also recommended that the hazardous liquid regulations require pipeline operators to provide an additional telephonic report to the NRC if significant new information becomes available during the emergency response (NTSB Safety Recommendation P–07–08). This rule includes provisions addressing these recommendations.

Section 15 of the PIPES Act of 2006 (Pub. L. 109–468, December 26, 2006) requires PHMSA to review and modify the incident reporting criteria to ensure that the data accurately reflects trends over time. One of the goals of this rulemaking is to comply with the requirements of this mandate.

In 2009, PHMSA revised the incident/accident report forms for gas transmission, gas distribution and hazardous liquid pipelines (August 17, 2009; 74 FR 41496). The use of these new forms were required beginning on January 1, 2010. The revisions to these forms were intended to make the information collected more useful to all those concerned with pipeline safety and to provide additional, and in some instances, more detailed data for use in the development and enforcement of its risk-based regulatory program.

II. Analysis of Public Comments

PHMSA received comments from 37 organizations including:

- Eight associations representing pipeline operators (trade associations).
- Fourteen gas distribution pipeline operators, many of which also operate small amounts of transmission pipeline as part of their pipeline systems.
- Five gas transmission pipeline operators.
- Two LNG facility operators.
- One operator of both gas transmission and hazardous liquid pipelines.
- The National Association of State Pipeline Safety Representatives.
- Two state pipeline regulatory authorities.
- Two pipeline service vendors.
- One standards developing organization.
- One citizens group.

Most commenters supported PHMSA's proposal to improve its data collection, although many expressed concerns over specific aspects of the proposal. This section addresses general comments regarding PHMSA's approach. We address comments related to specific changes proposed in the NPRM and on related proposed reporting forms individually, below:

General Comments

Stability and Consistency

A number of comments addressed stability and consistency in reporting and data collection. Southwest Gas Corporation (SWGas), Paiute Pipeline Company (Paiute), and TransCanada noted that PHMSA was revising incident report forms not affected by the changes proposed in this NPRM concurrently but in a separate docket. These commenters suggested that the dockets be combined or that PHMSA delay changes to the incident report forms until this proceeding was concluded. SWGas and Paiute also suggested that all data-collection changes should be considered in light of their potential impact on other PHMSA regulatory initiatives, such as control room management and IM for distribution pipelines. SWGas and Paiute also suggested that cause categories (*e.g.,* for leaks, incidents) should be consistent across all reports and that PHMSA should convene working groups to agree on categories and the minimal set of data needed. They contended that PHMSA's proposal would involve collection of more data than it will ever use. Piedmont Natural Gas Company (Piedmont) also requested that causes be made consistent between transmission and distribution, noting that it is burdensome to track causes differently for each pipeline type. Distrigas of Massachusetts LLC (DOMAC) suggested that PHMSA and the Federal Energy Regulatory Commission (FERC) meet to reconcile inconsistencies in reporting for facilities over which both agencies exercise jurisdiction, noting that such a meeting was contemplated in the 1993 Memorandum of Understanding between the agencies but has never occurred. National Grid requested that PHMSA make reporting changes once and minimize subsequent changes because change is very costly to implement and requires an operator to modify its management systems for collecting data.

Response

PHMSA recognizes that changes in reporting requirements necessitate a change in an operator's procedures and practices and that these changes should be infrequent. PHMSA also must change its data management systems when different data is reported. Yet, good data is necessary for PHMSA to understand the state of pipeline safety and to identify areas where additional regulatory attention may be needed. PHMSA is updating all of its data collection/management and reporting requirements so that it has the data that it needs to advance as a data-driven organization. PHMSA acknowledges that the changes made in this final rule, and to the incident/accident forms, will require the reporting of more data. PHMSA is making every effort to assure that the outcome of this rulemaking will minimize the need for any future changes. PHMSA is coordinating all of the activities related to data collection and does not believe that it is necessary to combine dockets. PHMSA is trying to establish consistent use of cause categories across all types of reporting and is considering its data collection needs, and the effect of its data gathering requirements, in light of its other regulatory initiatives.

PHMSA does not consider that a meeting with FERC to reconcile any differences in reporting is necessary at this time. While FERC and PHMSA share jurisdiction over some LNG facilities, there are many LNG facilities subject to PHMSA's regulations over which FERC exercises no jurisdiction.

Implementation

The AGA, Northeast Gas Association (NEGas), Oklahoma Independent Petroleum Association (OKIPA) and five pipeline operators requested that PHMSA allow time for data collection processes, databases, and software to be modified before new forms are implemented. Some suggested allowing one year after the effective date of the final rule. OKIPA requested 18 months. SWGas and Paiute suggested that one full calendar year of data collection should be allowed before new forms are used. TransCanada suggested PHMSA conduct a 90-day trial and begin use of new forms at the beginning of the calendar year following the end of the trial, with no retroactive reporting. They asserted that this kind of approach is needed to make sure the system works and that retroactive reporting would be unnecessarily redundant and confusing.

Response

PHMSA recognizes that it will take time for operators to revise their internal data management and collection systems and processes to report newly-required information. At the same time, excessive delay only postpones PHMSA's ability to use new data to understand better the state of pipeline safety. PHMSA does not consider that any of the information required in the revised forms is new. Pipeline operators already collect this information. Changes to internal processes may, indeed, make it easier to organize and report this data, but PHMSA does not believe that any retroactive data gathering will be required to complete the new annual report forms. The industry has been aware for some time that changes of this nature were in development. As discussed above, PHMSA needs better data to judge the effectiveness of its regulatory activities and to make informed decisions about future activities. Further postponement will only delay PHMSA's ability to use better data. Operators will therefore be required to use the new annual report forms in 2011 to report data for 2010. The information required to complete the new LNG incident report form is related to the occurrence of an incident and is collected during investigation of the event, not over time. Thus, the rule requires that the new form be used as soon as it is approved. However, in order to develop its on-line systems, PHMSA is delaying the submission of the 2010 annual reports for gas transmission, LNG and hazardous liquids. For the reporting year 2010, the gas transmission annual report and the LNG annual report will not be required to be submitted until June 15th and the hazardous liquid annual report will not be required to be submitted until August 15, 2011. In addition, we are delaying the implementation of the OPID registry requirements until January 1, 2012.

Additional Comment Opportunity

The Gas Piping Technology Committee (GPTC) and the Pipeline Safety Trust (PST) suggested that PHMSA allow a second opportunity for public comment. They noted that many changes were proposed in the NPRM and that many issues remain to be unresolved. They also noted there are significant changes to the related reporting forms.

Response

PHMSA believes adequate time has been given for comment and that an additional comment period is not needed. PHMSA considers that the issues have been well vetted through discussions with industry data groups, the comments discussed in this notice, and discussion at the December 2009 public meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

As discussed below, PHMSA is withdrawing the proposed new safety-related condition report form.

Organization of Regulatory Reporting Requirements

AGA, GPTC, DOMAC, and seven pipeline operators suggested that reporting requirements for gas pipelines and LNG facilities should be integrated into 49 CFR Parts 192 and 193 respectively. At present, reporting requirements for gas pipelines and LNG facilities are consolidated in Part 191 while the technical safety requirements applicable to these facilities are in Parts 192 and 193. For hazardous liquid pipelines, reporting and technical requirements are both in Part 195. Commenters suggested that relocation of the gas/LNG reporting requirements would improve clarity. DOMAC suggested it would be clearer for LNG facility operators given that the definitions in Part 193 are more specific to LNG—definitions in Part 191 are focused more on gas pipelines and can create confusion for LNG operators. SWGas and Paiute similarly commented that they consider LNG facilities to have unique characteristics that do not fit a pipeline-based reporting scheme. The other commenters also suggested that future changes would be facilitated and questioned why there is a different approach in the regulations for gas/LNG than for hazardous liquid pipelines.

Response

PHMSA did not propose any changes in how the pipeline safety reporting requirements should be organized. Thus, changes to incorporate Part 191 reporting requirements into Parts 192 and 193 are beyond the scope of this rulemaking. PHMSA will consider if it should undertake a future rulemaking to make these changes.

Risk-Based Regulation

Some commenters questioned whether the proposed changes reflect a risk-based approach. Technology and Management Systems, Inc. (TMS) noted that risk-based regulation would require consideration of both probability and consequences and standards that establish criteria on a risk basis. TMS also suggested that PHMSA should collect time and total volume of product flow between incidents, asserting that this data is needed for a true consideration of risk. DOMAC also suggested that throughput data be collected from all sectors on annual reports to provide a context for analysis of safety over time.

Response

PHMSA recognizes that a determination of risk involves consideration of both probability and consequence. Many of PHMSA's recent regulatory changes, particularly our IM initiatives, have been directed at managing risk, and these initiatives involve consideration of both the probability of an adverse event occurring and its potential consequences. PHMSA also recognizes that true "risk-based" regulation would involve standards expressed in terms of numerical thresholds related to risk. PHMSA does not consider such an approach practical for regulation of pipeline safety at this time.

PHMSA does not agree that collecting information on time and volume of product flow between incidents would serve PHMSA's needs or provide a better analysis of risk. Similarly, additional data concerning product throughput is not needed. Overall information on product movement is available from data PHMSA and the Energy Information Administration collect on annual reports, and this information can be used to understand the context in which pipeline incidents occur.

Definitions and Terminology

Some commenters requested that PHMSA add definitions for terms not now formally defined in the regulations. PST suggested adding definitions to Part 191 for gas pipeline facility/facilities,

LNG plant, production facility, distribution pipeline system, gathering pipelines, and transmission pipelines, noting that these terms are used in the part but not now defined. DOMAC requested that the regulations refer to an "LNG facility" rather than an "LNG plant or facility," because the regulations only define the term facility. El Paso Pipeline Group (El Paso) suggested that terms be defined as needed, particularly the term "explosion." SWGas and Paiute recommended clarifying use of the term "significant," noting that the regulatory analysis supporting the NPRM used this term to describe events using the same criteria as those defining accidents in § 195.50. El Paso suggested that the references to "subchapter" in proposed § 192.945 be revised to refer to "part" as found elsewhere in the regulations.

Response

In the NPRM, PHMSA did not propose to add the definitions suggested by PST to Part 191. PHMSA cannot now add definitions in the final rule without having allowed an opportunity for public comment. PHMSA notes that many of the terms are defined in Parts 192 and 193 and are thus commonly understood within the pipeline industry. PHMSA does not consider the lack of these definitions in Part 191 to be a cause of confusion. PHMSA will consider if future rulemaking is needed to define additional terms in Part 191.

PHMSA does not consider that all terms used in the pipeline safety regulations must be defined explicitly. Terms require definition when they have particular meanings within the regulations. Terms that are used that reflect their commonly understood meaning need not be defined explicitly. As such, PHMSA does not think it is necessary to define "LNG plant" or to refer only to an "LNG facility" because that term is defined in Part 193. The use of "plant" to describe an industrial facility is common within the English language and does not need an explicit definition.

PHMSA also does not find it necessary to define the term "explosion." Although there are accepted technical definitions for this term, many involve factors, such as consideration of the magnitude of the resulting pressure wave that would require data not normally available for a pipeline event. At the same time, PHMSA considers that the difference between "ignites" (or burns) and "explodes" is commonly understood, and that reliance on this common understanding results in less confusion than would result from trying to apply a formal definition.

With respect to the term "significant," that term was used in the regulatory analysis to differentiate events that require reporting as accidents from events of lesser importance. It was not intended to reflect any more-important subset of reported incidents/accidents. Regulatory evaluations are prepared to explain the basis and benefits of proposed regulatory changes to all stakeholders, including those not directly involved in the regulated industry. It is thus necessary to reflect that not all adverse events that occur at a pipeline facility are reported as incidents, only those that are significant.

Proposed § 192.945 included two references to other sections of the pipeline safety regulations, one of which is in another Part (Part 191). Therefore, we must use "of this subchapter" for that reference. The other reference to § 192.7 should be referred to as "of this part." PHMSA has revised this section accordingly.

Miscellaneous

PST opposes the use of the National Pipeline Mapping System (NPMS) to collect data if information will not be available to the public via that system.

El Paso and Spectra Energy Transmission LLC (Spectra) requested that PHMSA encourage all stakeholders to make use of the reported data. They noted that they currently answer many telephone calls from PHMSA and state pipeline safety regulatory personnel seeking information that this proposed rule would require be reported.

OKIPA requested that PHMSA provide examples of significant information that would require a supplemental incident report under § 191.15(c).

Response

PHMSA does not intend to use NPMS to gather data proposed for the annual reports. As we noted, PHMSA is redesigning its own information management systems. These changes will make information more readily available to PHMSA and state regulatory personnel. PHMSA will encourage its staff to obtain information from the PHMSA systems rather than telephoning operators.

Section 191.15(c) does not require a supplemental report for "significant" information, and thus no examples are necessary to illustrate significance. This paragraph requires a supplemental incident report when additional information becomes known after an initial incident report is submitted. This could include information necessary to complete a section of the incident report form that was left blank in the initial submission because the information was not yet known. It could also include additional information that the operator concludes is important to understanding the incident and which the operator would report in the narrative section of the form.

III. Discussion of Public Comments on Individual Issues

(1) Modifying the Scope of Part 191 To Reflect the Change to the Definition of Gas Gathering Lines

49 CFR 191.1

Proposal

In the NPRM, PHMSA proposed to revise the scope of Part 191 to address an inadvertent omission in the March 15, 2006, final rule that redefined the definition of gas gathering pipelines in Part 192. Part of that rulemaking effort revised § 192.1 to reflect the change in the scope of Part 192. A corresponding change was not made to the scope of Part 191, which specifies requirements for reporting incidents and other events and for submission of annual reports by operators of pipelines subject to Part 192. Because of this omission, there was confusion whether operators of gathering lines that became regulated only with the 2006 rule were required to submit reports. Further, operators of gathering lines have been reporting the number of miles of gas gathering lines by the old definition and not by the new definition in Part 192.

Comments

The Texas Oil and Gas Association (TXOGA) and Atmos Energy Corporation (Atmos) suggested clarifying § 191.15, requiring submission of incident reports, and § 191.17, requiring annual reports, to indicate that they apply only to regulated gathering lines.

The National Association of Pipeline Safety Representatives, supported by the Iowa Utilities Board (IUB), suggested PHMSA require operators of all gathering lines to report incidents, regardless of whether they are regulated under Part 192. The commenters noted that data on incidents that occur on non-regulated lines is necessary to determine whether additional regulation is needed.

Response

PHMSA has not changed the proposed regulatory language. Section 191.1(b)(4)(ii), as revised in this final rule, clearly states that Part 191 does not apply to gathering lines that are not regulated gathering lines as determined in accordance with § 192.8. Thus, none

of the provisions in Part 191, including §§ 191.15 and 191.17, applies to non-regulated gathering lines. The clarification TXOGA and Atmos requested is not needed.

PHMSA agrees that data for incidents that occur on non-regulated gathering lines could be useful in determining whether these pipelines should be brought under the reporting regulations. However, PHMSA did not propose such a change. PHMSA would have to undertake a new rulemaking to bring unregulated gathering lines under Part 191 incident reporting requirements.

(2) Changing the Definition of an "Incident" for Gas Pipelines

49 CFR 191.3

Proposal

In the NPRM, PHMSA proposed to change the definition of an incident in 49 CFR 191.3 to establish a new reporting category: An explosion or fire not intentionally set by the operator. This proposed change would make the definition consistent with the accident reporting criteria for hazardous liquid pipelines in Part 195.

The NPRM also proposed to establish a volumetric basis of 3,000 Mcf (the abbreviation "Mcf" means thousand cubic feet) for reporting unintentional gas loss. This proposal responded to a GAO recommendation. In a report titled: "Natural Gas Pipeline Safety: Integrity Management Benefits Public Safety, but Consistency of Performance Measure Should Be Improved," (GAO–06–946, September, 2006), GAO stated that the current gas incident reporting requirements do not adjust for the changing cost of gas released in incidents. GAO recommended that PHMSA "revise the definition of a reportable incident to consider changes in the price of natural gas."

In November 2005, the Interstate Natural Gas Association of America (INGAA) submitted a petition for rulemaking recommending PHMSA adopt a volume basis instead of the cost of gas lost. INGAA recommended 20 million standard cubic feet as a reporting threshold. INGAA based this volume on the $50,000 reporting threshold and the 1985 [1] cost of gas at $2.50 per Mcf.

The proposed change responded to both the GAO recommendation and the INGAA petition. It would remove the cost of gas lost from consideration in determining whether an event constitutes an incident under the existing criterion of $50,000 damage. This would correct the problem GAO identified in that the volatility of gas prices would no longer be an issue in determining whether a particular event met the definition of an incident. The new criterion would separately capture events in which a large quantity of gas is lost regardless of the value of resulting property damage.

The proposal also changed the language preceding the criteria to make clear that an incident was an event that resulted in one of the listed consequences. Previously, the regulations referred only to events that "involve[d]" one of the consequences and it was not clear that events of interest were those in which the gas pipeline failure resulted in the listed consequences.

Comments

Causality

INGAA, the Texas Pipeline Association (TPA), TransCanada, and NiSource Gas Transmission and Storage (NiSource) supported the change to make it clear that events only become incidents if the listed consequences resulted from a release of gas from a pipeline. DOMAC and National Grid disagreed, noting that conclusions of causality could imply legal liability, and expressing a preference for the former structure of reporting events that "involve" stated consequences to avoid pre-judging liability.

Explosion or Fire Not Intentionally Set by the Operator

AGA, the American Public Gas Association (APGA), GPTC, NAPSR, IUB, and many pipeline operators objected to the addition of this criterion. Many of these comments reflected confusion about fires that did not result from the gas pipeline failure. Commenters noted, for example, that over 400,000 structure fires occur each year in the U.S. In many of those fires, a gas meter is damaged and gas subsequently becomes involved in the pre-existing fire. These commenters maintained that PHMSA has no jurisdiction over fires that begin from non-pipeline causes and that reporting these events as pipeline incidents would significantly misrepresent pipeline safety and would distort current incident trends. They also asserted that other agencies (*e.g.,* Federal Emergency Management Agency) already collect fire data.

GPTC and several operators commented that a brief "fire" is an expected operational event during many activities associated with operation and maintenance of gas distribution pipelines. DOMAC claimed, for example, that the proposed criterion would require reporting of a lightning strike that ignites a gas relief vent that is designed to close and snuff out the resulting fire with no safety consequences. APGA argued that this criterion could significantly increase the number of "incidents" and that PHMSA had not considered the significant burden that could result due to existing requirements to test personnel involved in an incident for drugs and alcohol. Some commenters also objected that analyses referred to in the NPRM in support of this proposed new criterion were not included in the docket for public examination. Several pipeline operators suggested that the new criterion was not needed since the remaining criteria would provide a complete picture of consequential events.

INGAA, El Paso, and Spectra took a contrary position and suggested that the proposed new criterion apply to events resulting from intentional and unintentional releases of gas.

IUB suggested that we should not exclude fires intentionally set by an operator because hazardous liquid pipeline operators sometimes intentionally set fires to consume released product that cannot otherwise be recovered.

AGA commented that nearby fires should be deleted as a primary cause of a gas pipeline incident because these are outside PHMSA jurisdiction.

Volume Measure for Released Gas

AGA, NAPSR, IUB, and several pipeline operators questioned the practicality of the proposed criterion. AGA and several pipeline operators noted the difficulty in calculating the amount of a release within two hours, by which time a telephonic report of an incident is expected. They contended that factors necessary for this analysis are not readily obvious. IUB, Atmos, and Michigan Consolidated Gas (MichCon) questioned the applicability of this criterion to distribution pipeline incidents. They noted that property damage is the predominant component of costs for distribution incidents, and that the concern expressed by INGAA and others that increases in the cost of gas (and resulting increase in the calculated cost of gas lost) strongly influence the determination of whether an event constitutes an incident generally is not applicable to distribution pipeline events. They also noted that it is sometimes difficult to calculate the amount of gas lost in distribution events. SWGas and Paiute,

[1] The criterion for reporting property damage exceeding $50,000 was established in 1984 and began widespread use in 1985.

distribution and transmission pipeline operators respectively, agreed, stating that the volume of gas lost was usually ancillary to other reporting criteria. Baltimore Gas & Electric (BG&E) suggested eliminating or qualifying this criterion to apply only to unintended releases. BG&E contended that release of gas is a routine part of doing business and classifying such events as incidents could distort safety trends.

Most commenters questioned the size of the proposed criterion. Many noted that it was incorrectly stated in the proposed rule language as 3,000 million cubic feet, although the preamble discussion described the proposed amount as 3,000 Mcf. The industry trade associations and many operators argued that the proposed magnitude of the criterion is too small and that 3,000 Mcf is inconsistent with a criterion of $50,000 in property damage. INGAA suggested that the release criterion should be 20,000 Mcf. Other commenters suggested different values, varying between 10,000 and 20,000 Mcf. Northern Natural Gas (Northern) and Spectra (gas transmission pipeline operators) suggested that it would be appropriate to establish different criteria for gas transmission and distribution pipelines.

INGAA and several pipeline operators requested clarification concerning how the proposed criterion was to be applied. El Paso and Spectra contended that intentional releases, including from appurtenances designed to release gas (*e.g.,* relief valves) should not require reporting because these are not consequential incidents. These operators also suggested that the criterion not be applied to small leaks that might release large quantities of gas over an extended period. Similarly, NiSource commented that the criterion should only apply to immediate releases resulting from an event and should exclude subsequent blowdowns which have no significant effect on public safety. INGAA, El Paso, and TransCanada also suggested that the criterion be limited to gas lost at the incident location because gas lost at controlled locations (such as would be used for blowdowns) does not pose the same risk.

The industry trade associations and several operators also requested that PHMSA make clear that the introduction of this new criterion means that the cost of gas lost will no longer be used in determining whether an event constitutes an incident because of $50,000 in property damage costs. PST also requested clarification in this area. IUB suggested that PHMSA should provide guidance on how the amount of gas lost is to be calculated.

Property Damage Criterion

AGA and a number of pipeline operators commented that the existing criterion of $50,000 property damage is too low and should be raised. The commenters noted that this criterion was established in 1984 and has not been adjusted since; inflation has made events reportable that would not have been reportable in 1984. Commenters suggested that the criterion should be increased to $100,000, that it should be revised periodically or indexed for inflation, or that various categories of costs should be excluded from consideration. Contrary to this general trend, SWGas and Paiute suggested that all costs, including third-party damages and costs to relight customers, should be included, since these are costs directly related to the event.

Miscellaneous

PHMSA received several comments related to the definition of a gas pipeline incident that did not fit into the categories discussed above. MidAmerican, a gas distribution pipeline operator, suggested not to change the definition because the proposed changes would add events of little or no safety significance and divert resources from safety. The Missouri Public Service Commission (MOPSC) suggested revising the existing criterion related to injuries to include medical care at an emergency room or other facility in addition to inpatient hospitalization. MOPSC contended that changes in the practice of medicine have resulted in many injuries that formerly required inpatient hospitalization now being treated at such facilities. INGAA, NAPSR, Northern, Atmos, and TransCanada commented that incidents should be limited to unintentional releases of gas). MOPSC suggested that the definition not be limited to releases "from a pipeline," given that consequential events can result from releases at other locations (*e.g.,* fuel lines). AGA and BG&E noted that it is impractical to make incident criteria the same for hazardous liquids and natural gas because there are fundamental differences between hazardous liquid and gas pipelines, particularly gas distribution pipelines.

Response

Causality

PHMSA is sensitive to the potential legal issue raised by DOMAC and National Grid. PHMSA understands that an initial conclusion that a pipeline event "resulted in" certain consequences may differ from a legal finding that the pipeline event caused those consequences, resulting in liability. Still, PHMSA concludes that it is important to consider causality in reporting incidents.

PHMSA's mission is to protect public health and safety and the environment from risks associated with transporting hazardous materials by pipeline. PHMSA's concern in requiring the reporting of incidents is that it understands fully the extent to which problems on regulated pipelines result in adverse impacts on safety and the environment. Accordingly, PHMSA's analyses of its incident data always assume a degree of causality between the pipeline failure and the reported consequences. It is therefore important that this data be collected so that it is limited to those events in which a pipeline failure resulted in adverse consequences, rather than instances in which the event happened to occur concurrently with circumstances that meet one of the criteria defining an incident (*i.e.,* death, injury, or property damage exceeding the reporting threshold). PHMSA is thus persuaded that the incident definition in § 191.3 should require a conclusion of a degree of causality (which does not imply legal liability).

Causality has been treated in the § 195.50 requirement for accident reports for hazardous liquid pipelines for many years. Hazardous liquid operators have not complained to PHMSA that this treatment has adversely affected them in any liability proceedings. PHMSA has accepted the suggestion to conform the treatment of incidents in Part 191 to that of accidents in Part 195; therefore, this final rule defines a gas pipeline incident as "a release of gas from a pipeline, or of LNG, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:".

Explosion or Fire Not Intentionally Set by the Operator

PHMSA has not included in this final rule the proposed new criterion concerning fires or explosions not intentionally set by the operator. PHMSA is persuaded by the comments that it did not adequately consider the effect of this new criterion and the resulting burden. In addition, as discussed above, PHMSA has revised the definition of an incident in § 191.3 to include an implied causal relationship between a pipeline failure and one of the listed consequential

events. PHMSA concludes that these changes will eliminate the perceived need to report the vast majority of events in which a fire existed before the gas pipeline failure (so-called "fire first" events).

At the same time, PHMSA does not agree that no "fire first" events should be considered. PHMSA considers the argument that it lacks jurisdiction over fires not resulting from pipeline failures to be irrelevant. PHMSA also lacks jurisdiction over excavation near pipelines or over severe weather events (*e.g.,* hurricanes), both of which often result in pipeline incidents. PHMSA has a responsibility to assure that the pipeline facilities over which it has jurisdiction are adequately protected from events, including excavation, hurricanes, and nearby fires, that could cause safety-significant problems in those facilities regardless of whether it has jurisdiction over the events themselves. PHMSA collects incident data, in large part, to assure that this protection is adequate or to identify instances in which additional regulation is required to assure adequate protection.

As part of a separate proceeding involving changes to incident/accident reporting forms, PHMSA has revised the form's instructions to clarify that secondary ignition events—those events where the fire exists first and subsequently results in damage to pipeline facilities—need only be reported if the damage to pipeline facilities exceeds $50,000 (one of the incident-defining criteria in this rule). This provision was included in incident reporting instructions prior to a form change in 2004. A NAPSR resolution, included as an attachment to its comments filed in this docket, sought restitution of this provision as its proposed solution to the problem posed by "fire first" events. PHMSA agrees. The changes in this final rule and to the reporting instructions should eliminate the need to report the vast majority of structure fires, since few structures are associated with pipeline facilities that could result in $50,000 damage (the value of a typical residential meter set is a few hundred dollars). The changes will result in reporting of significant pipeline failures caused by nearby fires (*e.g.,* forest fires), which are appropriate for PHMSA's consideration in the same manner as other events that cause pipeline incidents.

Volume Measure for Released Gas

PHMSA concludes that many of the comments regarding this criterion resulted from the relatively low volume proposed. This led to concerns about the need to report routine releases associated with operational events, such as leaks and blowdowns. PHMSA analyzed incident reporting from 2004 through 2009 to assess the impacts that a 3,000 Mcf vs. a 10,000 Mcf volumetric reporting threshold would have on incident reporting frequency. Both gas transmission and gas distribution incident reporting during that timeframe included the cost of gas lost, facilitating the comparison. The comparison indicates that at 10,000 Mcf, we would lose about 20 incident reports per year across both gas transmission and gas distribution incident reporting. Because the annual frequency is very low (about 135 gas transmission and about 150 gas distribution incidents annually), PHMSA believes that lowering the numbers further would adversely impact our ability to effectively conduct safety analysis and trending. Our analysis shows that at the 3,000 Mcf threshold, we estimate we would lose six incident reports per year. INGAA had suggested a threshold of 20,000 Mcf, an amount that corresponds to the amount of gas that would have cost $50,000 when the property damage threshold was revised in 1984. PHMSA agrees that relating the volume threshold to the property damage threshold is appropriate, but does not agree that this should be done on the basis of 1984 costs. Incidents are reported based on current costs. Absent this rule change, an event that resulted in loss of approximately 10,000 Mcf would be reportable as a loss of $50,000 of gas (considering current costs). However, as PHMSA concludes from a comparison of 10,000 Mcf to 3,000 Mcf as stated above, the impact of lowering the already low frequency of reporting further would impact safety trending capability, therefore, we have chosen to maintain the proposed 3,000 Mcf threshold for the volume release criterion. This final rule requires reporting of releases that meet or exceed "3 million cubic feet" (i.e., 3,000 Mcf). PHMSA recognizes that initial calculations are approximate, but does not consider this a reason not to report events that have consequence.

PHMSA recognizes that the amount of gas lost in distribution incidents is usually less than that for transmission pipelines. This means that there will likely be fewer events that are defined as incidents on distribution pipelines due to the volume of gas released if the same criterion is used for both types of pipelines. Nevertheless, PHMSA considers use of a common criterion appropriate. Distribution events more often become "incidents" due to the amount of property damage that occurs or as a result of death or injury. This reflects real differences between transmission and distribution pipelines. Using a different volume release criterion for distribution pipelines to force the number of reported incidents to be similar to that of transmission pipelines would distort analytical results and obscure these real differences.

PHMSA agrees that intentional, controlled releases are not events with significant safety consequences. PHMSA has revised the final rule to clarify that reporting under the volume threshold is only required for "unintended" releases that exceed the specified amount. Yet, PHMSA does not agree that other criteria should be limited to unintentional releases. PHMSA considers that an intentional release that results in death, inpatient hospitalization, or $50,000 in property damage would be an event with significant safety consequences and should be reported as an incident.

The intent of this new criterion is to separate lost gas from other property damage costs to preclude the volatility of gas prices from affecting which events are defined as incidents. PHMSA has revised the final rule to make clear that the cost of gas lost is not to be included in the calculation of property damages for comparison with the $50,000 criterion.

Property Damage Criterion

The NPRM did not include any change to the existing $50,000 property damage criterion. As such, changes to this criterion would be outside the scope of this rulemaking. However, PHMSA does believe that because the annual frequency of both gas distribution and gas transmission incident reporting is extremely low as noted above, a reevaluation of that threshold is appropriate and PHMSA may take that under consideration in the future.

Miscellaneous

PHMSA does not agree that the changes in the definition of a gas pipeline incident add events of little safety significance. As discussed above, these events are significant. PHMSA has made clarifications to eliminate reporting of non-consequential events (*e.g.,* intentional blowdowns and most "fire first" events). PHMSA does not consider that these changes will result in any inappropriate redirection of resources.

Similarly, PHMSA did not propose any change to the existing criterion for injury; therefore, MOPSC's suggested

changes to this criterion would be outside the scope of this proceeding. PHMSA notes, however, that inpatient hospitalization is an objective criterion. Other treatment can vary based on local practices. In some areas, people with minor injuries may still be taken to emergency rooms as a precautionary measure, but those patients would not be admitted unless their injuries were serious. PHMSA considers the existing criterion appropriate.

PHMSA has discussed above its reasons for requiring reporting of events resulting from intentional releases of gas, excluding events that result solely in loss of gas, as incidents. Pipelines and pipeline facilities are PHMSA's focus of regulatory concern; therefore, PHMSA has not accepted MOPSC's suggestion to expand the scope of incidents beyond releases from these facilities.

PHMSA agrees that the criteria defining an incident for hazardous liquid and gas pipelines should recognize differences between those pipelines and the commodities they carry. As discussed above, PHMSA has decided not to include a criterion in the definition of a gas pipeline incident related to a fire not intentionally set by the operator or an explosion. Such a criterion has long been part of the definition of an accident for a hazardous liquid pipeline.

(3) Requiring Electronic Reporting and Filing of Reports

49 CFR 191.7 and 195.58

Proposal

In the NPRM, PHMSA proposed to require operators of a regulated pipeline or facility to submit all reports to PHMSA electronically. This proposal was intended to improve the processing of submitted reports and reduce paperwork burdens.

Comments

Most commenters supported electronic reporting, while APGA suggested retaining an option for paper filing for very small distribution operators that may lack internet access. GPTC noted that the proposed requirement to apply for non-electronic submission 60 days in advance of a report being due was inconsistent with the requirement to submit incident reports in 30 days. OKIPA requested that PHMSA describe the criteria it will use to review applications for non-electronic reporting and to assure consistency among states. PST objected to allowing an option for non-electronic reporting, noting that internet access is now widely available.

Many commenters addressed the process by which electronic reports will be made. The American Petroleum Institute (API) and the American Association of Oil Pipelines (AOPL) argued that electronic reporting should be more than completing a form on the computer; it should include internal checks to prevent incorrect entries, assure data consistency, etc. API and AOPL also suggested that a narrative description should continue to be part of incident reports. API, AOPL, AGA, GPTC, and several pipeline operators suggested that the on-line system allow for saving interim work and printing a completed form before submission. API, AOPL and Atmos proposed that the system allow for electronic submission of a completed template to save time and reduce potential for errors. Pipeline operators recommended that the on-line system allow users to print a blank form, provide electronic confirmation of submission, and provide clear guidance for updating/modifying/superseding reports in the event of new information. National Grid commented that controls should be established to allow submissions only by a company's designated representative. APGA, GPTC, and Northern Illinois Gas Company (Nicor) maintained that reports should not be considered late-filed if the on-line system is not available on the date on which a report submission is required.

Northern suggested that the on-line system should also allow a report to be rescinded electronically, which would be consistent with requiring electronic submissions and would be less burdensome. Piedmont advised that PHMSA should staff sufficiently to handle data correction requests based on their experience that it is difficult to correct data once submitted.

APGA, GPTC, and NiSource suggested revising the regulations to allow electronic submittal of reports that must be made immediately to the NRC, noting that the NRC system now provides for this alternate method.

API, AOPL, TPA, TXOGA, and Atmos commented that separate reports should not be required for interstate agents and states; instead current technology allows reports to be forwarded to the appropriate agency based on the location of assets involved.

Response

PHMSA agrees that a paper-filing option must be provided, although PHMSA expects that the need for alternate submission will be rare. At the same time, PHMSA is persuaded that its proposed option to apply for non-electronic filing was unduly burdensome. A requirement to request non-electronic reporting 60 days in advance is, as commenters noted, inconsistent with a requirement to report incidents in 30 days. In addition, requiring a request for non-electronic filing separately for each report unnecessarily adds burden for operators and PHMSA because the same few operators are likely to apply for approval repeatedly. PHMSA has revised the final rule to eliminate the requirement to request an alternate reporting method 60 days in advance of each required submission. The final rule provides that operators may apply for use of alternate submission methods and that approvals of such requests may be indefinite or until a date specified by PHMSA, eliminating the need to apply separately for each required submission. PHMSA will review the description of the undue burden that would be imposed by a requirement to file electronically but does not find it necessary or appropriate to define specific criteria for acceptance or denial at this time. The requirement for electronic submission, and for alternate methods, applies to submissions made to PHMSA; therefore, the question of consistency among states is not at issue here.

PHMSA's electronic reporting system includes the options commenters requested. This system is already being used for recently revised incident/accident report forms. The system includes internal checks for data consistency and incorrect entries (*e.g.,* entering text in a numeric field). It allows saving of work in progress and printing of completed or blank forms. Where forms are printed before submission, the word "DRAFT" appears as a diagonal watermark to avoid later confusion as to whether a filed copy represents information that was actually submitted. The incident reports provide for a narrative description. Confirmation of submission is provided by an electronic date stamp visible to both the submitting operator and PHMSA.

PHMSA has not allowed for submission of a completed template in lieu of entering the information on-line. On-line data entry provides for data quality checks that would not be possible with uploaded files. These controls are important to help reduce the need for data correction, and are expected to help address the difficulties with data correction raised by Piedmont.

Submissions are made using user identification and passwords that are provided to a company's designated person. PHMSA does not consider it necessary to modify further its on-line

system to allow submission only by designated company representatives. Operators should control dissemination of their ID/password as they would for any password-protected computer system.

PHMSA has not adopted Northern's suggestion to allow reports to be rescinded electronically. Although this may be easier, rescissions need to be made through PHMSA's staff for data quality reasons.

PHMSA has eliminated requirements to file duplicate copies of reports with states with the exception of safety-related condition reports. PHMSA is required by statute (49 U.S.C. 60102(h)) to provide for concurrent notice of safety related conditions to appropriate State authorities.

As suggested by commenters, PHMSA has revised §§ 191.5 and 195.52 to allow operators the option of submitting on-line reports of certain incidents to the NRC (NRC). The NRC now allows for electronic reporting of incidents; therefore, including this option in PHMSA's regulations imposes no new burden on the regulated industry.

(4) Requiring LNG Operators To Submit Incident and Annual Reports

49 CFR 191.9, 191.15, 191.17 and 193.2011

Proposal

In the NPRM, PHMSA proposed to amend §§ 191.9, 191.15, 191.17, and 193.2011 to require LNG facility operators to submit annual and incident reports consistent with the current reporting requirements for gas and hazardous liquid pipeline operators. LNG facility operators had previously been exempted from these requirements.

Comments

SWGas and Paiute contended that submission of incident reports for LNG facilities is not needed because incidents at these facilities are very rare. BG&E and MidAmerican also maintained that annual reports are unnecessary because these facilities are static and the reported information will not change from year to year. SWGas and Paiute claimed that the need for annual reports to justify user fees is specious given that fees are currently determined by tank volume. These operators also contended that it was not possible to estimate the burden for completing the annual report forms since changes in which emergency shutdowns are to be reported could have a major impact on what needs to be reported. DOMAC also commented that information reported on incident reports (*e.g.,* emergency shutdowns) should not be repeated on annual reports. DOMAC maintained that PHMSA has not made a good case for the need for reporting by LNG facility operators and those problems in other sectors should not be the basis for requiring reporting by LNG operators. DOMAC suggested that PHMSA should convene an LNG data team to design forms to be used to report LNG incidents because the reporting proposal and related forms demonstrate a lack of knowledge of LNG facilities. DOMAC further suggested that facility data should be automatically populated on incident report forms from information available in the Pipeline and LNG Operators' Registry. SWGas and Paiute suggested that PHMSA should partner with FERC or states to get LNG information to eliminate duplicate reporting. These operators also claimed that a form is not needed for safety-related condition reports because such reports at LNG facilities are rare.

Other commenters raised concerns related to how the definition of an incident in § 191.3 apply to LNG facilities. A principal concern of these commenters was the proposed requirement that all emergency shutdowns be reported as incidents, except those resulting from maintenance. AGA, INGAA, NEGas, Northern, Northwest Natural Gas (NWN), BG&E, National Grid, and MidAmerican would all limit reporting to actual emergencies, noting that not all emergency shutdowns are safety-significant events. MidAmerican suggested that requiring such reports would discourage operators from installing aggressive emergency shutdown systems. DOMAC claimed that the exclusion for maintenance is unnecessary because the preamble of the 1984 rulemaking that required telephonic reporting of emergency shutdowns stated that only actual emergencies needed to be reported. DOMAC also maintained that the concept of a leak in piping and equipment is not applicable to an LNG facility. BG&E would similarly eliminate rollover events as not safety-significant. SWGas and Paiute would delete from the definition of an incident any reference to refrigerant gas because this is not gas in transportation and not subject to PHMSA's jurisdiction. Piedmont asked for clarification as to whether the volume release or explosion/fire criteria apply to LNG facilities.

SWGas and Paiute noted that use of some terms differs between pipelines and LNG facilities and that terms used for LNG need to be accurately defined.

NiSource Distribution Companies (NISource Distribution) suggested that because LNG is a "chemical of interest" for terrorist protection, PHMSA and the Department of Homeland Security should discuss what information is to be collected and made public.

Response

PHMSA is not persuaded that relative rarity of incidents at LNG facilities means that reports of these events are not needed. Such reports may be submitted rarely, but they will provide valuable data concerning safety-significant events and conditions that may occur. The existence of a reporting requirement or a related form will impose no burden on LNG operators that do not experience incidents. PHMSA agrees with DOMAC that it is not necessary to collect information on annual reports that are obtained via incident reports. PHMSA has omitted reports of emergency shutdowns from the annual report form, as these will be reported as incidents. (As discussed below, PHMSA is withdrawing the proposed safety-related condition report form at this time).

PHMSA recognizes that major changes occur infrequently at individual permanently-located LNG facilities. At the same time, some LNG facilities are temporary or mobile, and there has been unprecedented expansion in the number of LNG facilities. It is no longer practical for PHMSA to manage its oversight of LNG facilities based on recalled knowledge. Data is needed, and annual reports are the vehicle by which this data will be collected and kept current. PHMSA has designed its form and will design its on-line reporting to allow the operator of an individual LNG facility to indicate that data reported in the previous year has not changed, in which case the operator will not need to repeat the information. This will minimize the reporting burden for operators of facilities that do not experience changes.

PHMSA does not agree with DOMAC that the forms proposed for LNG reporting represent little knowledge of LNG facilities and systems. The proposed forms were based, in large part, on forms that have been used for reporting LNG events in the State of Texas for many years. PHMSA believes these forms are suitable for use, but PHMSA recognizes that these forms, as for any form, could likely be improved. PHMSA will consider DOMAC's proposal to convene an LNG data team to review the forms as a subsequent effort but does not consider it necessary to take this step before implementing a reporting requirement for LNG facilities.

PHMSA notes that problems in other sectors have not formed the basis for requiring reporting of LNG incidents. PHMSA has focused on LNG in this effort. The criteria defining significant consequences apply equally to LNG and to pipelines. An event that causes a death, serious injury, or significant property damage is significant whether it occurs on a pipeline or at an LNG facility. LNG emergency shutdowns have long existed as an incident-defining criterion. The change here is that PHMSA is now requiring written reports for LNG incidents that previously required only telephonic reports to NRC. This is part of PHMSA's increased data focus. PHMSA intends to base future actions on its analysis of data concerning actual safety performance. Additional data concerning LNG incidents, even if rare, is important to support this goal.

PHMSA has revised the definition of an incident in § 191.3 to clarify that actuation of an emergency shutdown system at an LNG facility that results from causes other than an actual emergency does not constitute an incident. This will eliminate the need to submit incident reports for shutdowns that result from maintenance, inadvertent actuations and signals, and any other emergency shutdown that does not result from an actual emergency. PHMSA has also deleted rollovers as an incident criterion. PHMSA agrees that these changes will focus reporting on events with safety significance. PHMSA doubts, however, that LNG operators would not install systems that aggressively protect their facility investment solely because of a requirement to report safety system actuations.

PHMSA has not deleted reference to a release of refrigerant gas. PHMSA acknowledges that this is not gas in transportation, but the facility in which it is used is regulated. Release of refrigerant gas could represent a failure within that facility. If that failure results in consequences significant enough to trigger one of the incident reporting criteria, then that event needs to be reported. The volume release criterion applies to LNG facilities, as modified, to include only unintentional gas loss. In response to comments, we have eliminated the proposed fire or explosion criterion.

PHMSA agrees with DOMAC that it would reduce operator burden, and likely improve data consistency/quality, if information in the Operator Identification (OPID) Registry was automatically populated into incident forms based on the entered OPID. At present however, the data that PHMSA has concerning OPIDs is not of sufficient quality to do so. This will change as operators validate the information (discussed below). PHMSA will consider a change to its on-line reporting system, once validation is completed, to implement the suggested change.

In response to comments about consistency in definitions of terms, PHMSA has made every effort to make the definitions in forms and instructions for LNG reporting accurate and consistent.

PHMSA regularly consults with the Department of Homeland Security regarding security concerns about data made available to the public. PHMSA will include LNG data in these discussions.

(5) Creating a National Registry of Pipeline and LNG Operators

49 CFR 191.22 and 195.64

Proposal

In the NPRM, PHMSA proposed to require all pipeline operators and LNG plant or LNG facility operators obtain an OPID from PHMSA. This proposal also would require operators to use this OPID for all submissions (NPMS, annual report, accident, incident, safety-related condition etc.) to PHMSA. PHMSA also proposed that an operator notify PHMSA at least 60 days in advance of certain profile or other changes to its facilities which could impact public safety. Such changes would have included any of the following activities for an existing or new pipeline, pipeline segment, pipeline facility, LNG plant, or LNG facility:

- A change in the operating entity responsible for operating an existing pipeline, pipeline segment, or facility.
- A change in the operating entity responsible for managing or administering a safety program (such as an IM or Corrosion Prevention Program) covering an existing pipeline, pipeline segment, or facility.
- The acquisition or divestiture of 50 or more miles of an existing regulated pipeline or pipeline segment.
- Any rehabilitation, replacement, modification, upgrade, uprate, or update costing $5 million or more.
- The construction of ten or more miles of a new hazardous liquid or gas transmission pipeline facility, or other construction project costing $5 million or more.
- The construction of a new LNG plant or LNG facility, or the sale or purchase of an existing LNG plant or LNG facility.

A National Registry of Pipeline and LNG Operators will serve as the storehouse for the reporting requirements for a regulated operator. Essential to the effectiveness of PHMSA's oversight is the ability to monitor and assess the performance of the regulated community—examining both discrete performance as well as historical trending over time. The single greatest challenge to PHMSA's ability to track performance, over time is the dynamic nature of the regulated community itself. Due to conversions of service, new construction, abandonments, or changes in operatorship that occur during divestitures, acquisitions, or contractual turnovers, operators' asset profiles often change year-to-year, rendering historical trending inaccurate. Currently, PHMSA does not receive any alerts, information, or notification of these types of changes and we lack any mechanism to track or capture these changes when they occur. As a result, PHMSA's ability to accurately portray and assess the performance of individual operators is severely compromised, with the situation deteriorating over time as operating and asset changes accumulate and compound.

Additionally, there is an increased burden to industry and to PHMSA in tracking and maintaining potentially numerous OPID's for the same company. Some companies accumulate a large number of OPID's, often inadvertently, as the company reports across a variety of lines of business (*e.g.,* operators may use separate OPID's for reporting their user fee mileage, safety-related conditions, NPMS submissions, incidents, and annual infrastructure and IM data.) The proposed National Registry of Pipeline and LNG Operators will facilitate the use of one OPID across a company's reporting requirements for a given set of pipeline segments or facilities thereby reducing the burden on both PHMSA and industry for tracking these multiple, duplicative OPIDs.

Comments

Many comments concerning the proposed OPID Registry addressed the proposal to require 60-days advance notice of certain events that can change the nature of the operator. INGAA, API, AOPL, and many operators commented that many of the events for which notification was proposed are business transactions that must remain confidential until they occur. Sometimes, this is dictated by requirements of the Securities and Exchange Commission or other agencies. Commenters also noted that even non-confidential changes may be delayed or modified before

implementation, causing schedules to be delayed. INGAA and Piedmont suggested that annual reporting of changes should be sufficient and that per-event notification should not be required. They also suggested that PHMSA should obtain information currently reported to FERC, which duplicates some of the information proposed for the Registry. AGA, Atmos, and BG&E recommended deleting the proposed notification requirements because we had not articulated the need for the information. API and AOPL also asked that PHMSA explain the need for notifications. TPA suggested deleting certain notification elements. AGA, NiSource Distribution, and NWN noted that the information is already reported annually to NPMS or on other forms. SWGas sought an exemption for distribution pipeline operators from the notification requirements, contending that PHMSA has no authority to regulate the costs involved and that a relationship to safety is not obvious.

Commenters also expressed concern about the extent of information that would be required in notifications. Since the proposed notification form was not placed in the docket, AGA, Atmos, and BG&E claimed that they cannot estimate the burden notification would entail. API and AOPL suggested that PHMSA should identify the information to be included in notifications and provide an additional opportunity to comment. NiSource suggested that a form be developed for this purpose. SWGas and Paiute noted it was unclear how operators are to make required notifications. Atmos and TPA suggested that the proposed notification requirements should be delayed while PHMSA seeks additional comments.

Other comments in this area addressed concerns with specific elements of the proposed notification requirements:

- API and AOPL suggested that notification should be required for acquisition of a pipeline system rather than a pipeline facility because this is more consistent with the definitions in § 195.2.
- El Paso, SWGas, and Paiute suggested that additional guidance was needed concerning how to treat multi-year construction events for notification purposes. NiSource suggested that clarification was needed on how to address the costs for multi-year projects and further suggested that reporting for this criterion be moved to the annual report.
- AGA, API, AOPL, and numerous pipeline operators expressed concerns about the proposed notification requirement for rehabilitation, replacement, modification, upgrade, uprate, or update or construction of a new pipeline facility costing $5 million or more. They suggested deleting the dollar criterion completely, given that it is not indexed for inflation and would be likely to capture smaller projects in future years. They would rely solely on notification of construction of some threshold of miles of pipeline. El Paso and Spectra suggested increasing the threshold from $5 million to $10 million, noting that the cost of materials, contractors, and gas loss makes a $5 million project a relatively minor activity. National Grid would index the dollar amounts for inflation and limit their applicability to single projects vs. programs with multiple projects.
- Other commenters expressed concerns with the proposed notification requirement for rehabilitation, replacement, modification, upgrade, uprate, or update. API and AOPL would eliminate the proposed requirement noting that these changes are intended to improve safety, notification does not add to safety, and the results of these projects would appear in subsequent annual reports. Atmos suggested that the provision exclude changes that must be made in an emergency, since 60-day advance reporting would be impractical in such circumstances. Mid-American would delete this criterion completely, claiming it would delay emergency repairs. TransCanada suggested collecting this information via annual report after the events had occurred. NAPSR, on the other hand, supported reporting under this criterion, noting that the information is needed to address public concerns and inquiries.
- Some commenters questioned the mileage threshold for notification of pipeline construction projects. API, AOPL, Atmos, and TXOGA would increase the threshold from ten miles to 50 miles, noting that this is consistent with the proposed requirement for notifying of acquisition of an existing pipeline and that smaller construction projects would show up in annual reports. IUB suggested that the threshold be lowered to five miles because information about even small construction projects is necessary to plan safety inspections. Spectra supported 60-day prior notification for construction of more than ten miles of pipeline or a new LNG plant.
- INGAA pointed to a discrepancy between the preamble and the regulatory text on notification of changes in the entity responsible for major pipeline safety programs. INGAA suggested that notification should not be required. PST, on the other hand, suggested that the discrepancy was an omission from the regulatory language and that PHMSA add this notification criterion.
- Atmos and TPA suggested modifying the criterion for pipeline acquisition to refer to pipelines/facilities subject to Parts 192 and 193 rather than "regulated by PHMSA." They noted that the proposed language could lead to confusion for pipelines states regulate.
- IUB requested that the Registry capture contact information following acquisitions or mergers because this information has sometimes been difficult to determine. BG&E would limit notifications to maintaining current contact information. El Paso and Spectra suggested that a means to update contact information electronically would be less burdensome than current practice of requiring a letter to do so.
- API and AOPL suggested defining "operating entity" in the phrase "[a] change in the operating entity responsible for an existing pipeline, pipeline segment, or pipeline facility, or LNG facility."
- National Grid requested that PHMSA work with states toward single reporting per state per operator.

Another major area of comments was the perception that PHMSA was requiring operators to re-apply for their existing OPIDs. API and AOPL commented that operators should not have to re-enter information when re-applying, but rather record only changes in ownership. El Paso, OKIPA, and Piedmont objected to requiring operators to re-apply when PHMSA has not justified such a requirement. OKIPA commented further that operators should not be required to re-populate information based on a new OPID. Atmos and TPA commented that PHMSA should establish reasonable deadlines for operators to complete re-application and for PHMSA to establish a process to keep the information current. DOMAC suggested that it would be helpful to have more information on the content of information required when applying for an OPID.

Response

PHMSA acknowledges that many of the changes for which we proposed to be notified are business transactions that need to be kept confidential and for which advance notification is impractical. However, not all of the proposed notification criteria are in this category. New construction by an existing operator, including planned

modifications, upgrades, rehabilitation and uprates, are not business transactions requiring such confidentiality. PHMSA has modified the proposed notification requirement to require notification of this type of activity 60 days in advance. We will require notification of business transactions that typically require confidentiality within 60 days after the event has occurred.

PHMSA requires advance knowledge of planned construction activities so that it can plan safety inspections and align appropriate inspection resources to conduct these inspections. For pipeline construction in particular, it is important to inspect construction activities while they are underway, given that the pipeline is often buried before being placed in service and it is not then practical to inspect the quality of construction. NAPSR's comments support this need, noting that states exercising safety jurisdiction also require advance notice for inspection planning.

PHMSA needs to know of changes in operator name, ownership, and responsibility for operations to adequately track ongoing safety performance, and to accurately portray safety performance over time, including the identification of emerging safety trends. Sale of an existing pipeline, or the complete acquisition or merger of a company may involve the wholesale adoption of standing operating and safety practices and programs. These programs may continue without change, or they may be integrated into the programs of a new owner. Additionally, sale of an existing pipeline may involve a complete replacement of staff. Personnel responsible for day-to-day operation of the pipeline often remain, becoming employees of the new owner. PHMSA must know when changes in responsibility occur, and the parties involved, to accurately evaluate and trend safety performance data through and following periods of change. Some information regarding ownership is currently reported via NPMS, but NPMS does not include all of the information PHMSA needs. Similarly, although there is duplication in some reporting elements with reports required by FERC, many pipeline and LNG facility operators are not subject to FERC reporting requirements making it impractical for PHMSA to rely on FERC information to serve its operational needs.

Whether ownership change is involved or not, sometimes there is a change in the primary responsibility for managing or administering one or more PHMSA-required safety programs. This situation arises when existing pipelines or LNG Facilities covered by a single OPID are part of a common PHMSA-required pipeline safety program or LNG safety program which also involves other assets covered by other OPIDs. (These common safety programs are sometimes referred to as "umbrella" safety programs.) For PHMSA to adequately evaluate these programs and accurately document compliance and safety performance over time, it must be clear, and PHMSA must have a current record of which OPIDs (and, by extension, which corresponding pipelines and/or facilities) are included under each PHMSA-required safety program, know when these OPIDs officially came under these programs, and, if and when these OPIDs are ever removed from these programs. Additionally, this type of notification serves to facilitate PHMSA's resource planning and preparations for the conduct of its inspections of these safety programs. These "common safety program" relationships involving multiple OPIDs entail a relatively small number of pipeline operators, something on the order of 10–15% of the total number of operators. And they also tend to be the larger operators with multi-state and multi-system operations which, in turn, represent approximately 70–80% of the total infrastructure mileage. As a result, PHMSA's ability to accurately track and monitor a large majority of the nation's most extensive pipeline infrastructure will be accomplished through this notification requirement affecting relatively few operators. And this capability to understand the make-up of these common safety programs over time and through operating and/or ownership changes is the cornerstone of a more data-driven PHMSA organization.

PHMSA and the states need to know of planned construction activities, mergers, acquisitions and other changes in safety responsibility for distribution pipelines as well as transmission pipelines. PHMSA is not proposing to regulate costs associated with distribution pipelines or any other type of pipeline, rather, PHMSA is using the costs of modifications that do not involve construction measurable in miles as a trigger for identifying projects PHMSA regulates and for which prior inspection planning is needed. PHMSA has thus not exempted distribution pipelines from the notification requirements.

Although the NPRM did not propose that operators must re-apply for OPIDs, PHMSA recognizes that the NPRM was not clear in this regard due to the number and nature of comments on this topic. PHMSA has modified this final rule to make it clear that operators to which OPIDs have been assigned prior to the effective date of the final rule must validate the information associated with those OPIDs, and not initiate an entire new application or reapplication process. This validation must occur within six months of the effective date of the final rule. Operators must access the information currently in PHMSA's records concerning their OPIDs (using an on-line, internet-based system) to make changes where appropriate, or to indicate that the information is correct. This will help PHMSA assure that the information in its National Registry of Pipeline and LNG Operators is a current and accurate baseline. The information that operators must validate must be consistent with the information required when applying for a new OPID. This information will be on the OPID Assignment Request form (referred to in the NPRM as the OPID Questionnaire).

PHMSA has made changes to some of the criteria for notification, but has not adopted all the changes commenters suggested:

- PHMSA does not agree with API and AOPL that notifications for acquisitions should refer to pipeline systems. Pipeline facility, as defined in both §§ 192.3 and 195.2, is a broader term that better represents the nature of changes in which PHMSA is interested.
- PHMSA does not agree that additional guidance is needed concerning multi-year projects. The NPRM would not have required annual notification but notification prior to initiation of a project meeting a reporting threshold (dollars or miles) regardless of how many years over which the project was to be accomplished. The final rule retains the structure of the proposal in this regard.
- PHMSA understands the concerns commenters expressed about using a dollar threshold to identify certain projects requiring notification, but sees no practical alternative. As described above, PHMSA (and states) require prior notification of projects for which in-progress safety inspection is appropriate. A mileage threshold could identify appropriate pipeline construction projects, but some significant construction projects do not involve miles of pipe (*e.g.,* construction of a new pump or compressor station). PHMSA has increased the dollar threshold from $5 million to $10 million and has limited its applicability to projects not involving line section pipe. PHMSA has not indexed this threshold for inflation but considers that the increase in size and limitation in scope

obviates the concerns that smaller projects will be unnecessarily reported.

• PHMSA has also modified the reporting criterion for rehabilitation, replacement, modification, upgrade, uprate or other update to exclude changes that must be made on an emergency basis from the requirement for 60-day prior reporting. The final rule requires that operators notify PHMSA of emergency projects as soon as practicable.

• PHMSA has retained the 10-mile threshold for notification of projects involving construction of line section pipe. PHMSA recognizes that this is not consistent with the requirement to notify of acquisition of 50 miles of pipeline, but the needs addressed by each criterion are different. Acquisitions usually involve sizeable pipeline facilities; therefore, 50 miles is a reasonable criterion, and the information is needed to support accurate trending of safety data. PHMSA and states need information concerning pipeline construction to plan safety inspections, and a 10-mile construction project is large enough that safety inspections would be needed. PHMSA agrees with IUB that knowledge of even smaller construction projects (*e.g.,* IUB's suggested 5-mile criterion) would be useful in many cases, but considers 10 miles appropriate for this notification requirement.

• PHMSA has included a requirement to notify it of changes in the entity responsible for major pipeline safety programs. The failure to include this criterion in the proposed regulatory language was an oversight. As noted by PST, it was discussed in the NPRM preamble.

• PHMSA agrees with Atmos and TPA that reference to facilities regulated by PHMSA could cause confusion when facilities under state regulation are involved. PHMSA has modified the reference to facilities subject to Part 192, and has made a similar change to the Registry requirements for hazardous liquid pipelines in § 195.58.

• PHMSA understands the importance of updating company contact information and of reducing the burden for doing so. At the same time, PHMSA considers that a change in personnel, which could affect "contact information," is too fine a level of detail to require notification. Therefore, PHMSA has not adopted this requirement into the regulations. PHMSA will consider modifying the National Operator Registry to make it available for operators to report voluntarily changes in contact information.

• PHMSA has replaced the term "operating entity" so that the criterion in § 191.22 now refers to, "[a] A change in the entity (*e.g.,* company, municipality) responsible for an existing pipeline, pipeline segment, pipeline facility, or LNG facility." This should alleviate any confusion introduced by the use of a new term.

• PHMSA will make available to state pipeline safety regulators information that it receives through the National Operator Registry. States, however, have their own information needs, requirements, and administrative procedures, and PHMSA cannot force states to use common reporting instruments.

PHMSA considers it reasonable that operators want to know the burden associated with obtaining an OPID and notification of changes. The NPRM referred to an OPID Questionnaire (now called the OPID Assignment Request form) which was not made available for public comment. PHMSA is adopting a form for submitting on-line notifications to the National Registry of Pipeline and LNG Operators. Therefore, PHMSA will publish a separate notice in the Federal Register providing the public an opportunity to comment on the proposed forms.

(6) Requiring Electronic Safety-Related Condition and Offshore Pipeline Condition Reports

49 CFR 191.25, 191.27, 195.56, 195.57 and 195.58

Proposal

In the NPRM, PHMSA proposed to require an operator of a natural gas or hazardous liquid pipeline, or of an LNG plant or LNG facility to use a new standardized form instead of the free-form Safety-Related Condition reporting now used. For offshore pipeline conditions, PHMSA requires an operator to report certain information within 60 days after completion of the inspection of all its underwater pipelines subject to §§ 192.612(a) or 195.413(a). PHMSA proposed also to obtain this information on a standardized form, filed electronically with PHMSA.

Comments

Many commenters objected to a change from the current requirement for when a safety-related condition must be reported. Operators must report safety-related conditions "within five working days (not including Saturday, Sunday, or Federal Holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition."[2] The proposed language in the NPRM revised this to read "* * * determines or discovers * * *" which commenters believed eliminated the current distinction between five days after determination and ten days after discovery of a condition.

SWGas and Paiute claimed that because safety-related conditions at LNG facilities are rare, a reporting form is not needed. These operators also asked that PHMSA describe how safety-related conditions relate to the categories of leak, failure, and incident a lack of common understanding affects the quality and consistency of reporting.

With respect to offshore pipeline condition reports, Spectra recommended not requiring reports for inspections that find no exposed pipe. INGAA joined with Spectra in suggesting PHMSA require a report 60 days after identifying exposed pipe that poses a hazard to navigation. El Paso and TransCanada similarly suggested treating these inspections like incidents or IM inspections for reporting purposes (reporting after an event or annually), as different criteria/timing for risk-based inspections makes comparing data difficult.

Response

After considering these comments and reevaluating our information needs, PHMSA has decided to withdraw the proposed safety-related condition report and associated changes to §§ 191.25 and 195.56 at this time. PHMSA will continue to evaluate its needs and may, again, propose changes to requirements for submitting safety-related condition reports and the information to be included in such reports. The proposed change to the timing for submission of safety-related condition reports was an error. PHMSA has withdrawn the proposed changes to these sections.

Safety-related conditions are not similar to leaks, failures, and incidents and do not fit into a hierarchy with these terms. Leaks, failures, and incidents are instances in which a problem has occurred. Safety-related conditions are conditions which make it more likely that a failure will occur, and, therefore, require additional attention from the operator and the safety regulator.

The comments concerning underwater pipeline condition reports highlighted an inconsistency in the current regulations that PHMSA had not considered adequately. The requirements in §§ 191.27 and 195.57 require reports 60 days after completion

[2] §§ 191.25 and 195.56.

of the inspection of all pipelines subject to §§ 192.612(a) and 195.413(a) respectively, but the referenced sections do not require an inspection of all pipelines at a specified period of time. Rather, inspections are required to be done on appropriate periodic intervals, which may vary for different pipelines for an individual operator. Therefore, there might be no time where inspection of "all" pipelines subject to the inspection requirements is completed, triggering the reporting requirements of §§ 191.27 and 195.57. Further, §§ 192.612(c) and 195.413(c) require prompt notification if an underwater pipeline is found to be exposed. PHMSA is withdrawing the changes proposed in the NPRM to §§ 191.27 and 195.57. PHMSA is also withdrawing the proposed forms related to these requirements. PHMSA will consider the appropriate manner in which to address this inconsistency and consider the comments received in this proceeding as part of any future rulemaking.

(7) Merging the Gas Transmission IM Semi-Annual Performance Measures Report with the Gas Transmission Operator Annual Reports

49 CFR 192.945 and 192.951

Proposal

In the NPRM, PHMSA proposed to merge the gas transmission IM Program semi-annual performance measure reports into an operator's annual report. We also proposed changes to the annual report.

The annual report has historically collected information on the number of leaks from each of seven causes. The IM performance requirements include the number of leaks, failures, and incidents from each of nine causes. This difference was the basis for GAO's recommendation in its report (GAO–06–946), "Natural Gas Pipeline Safety: Integrity Management Benefits Public Safety, but Consistency of Performance Measure Should Be Improved" that PHMSA make changes to allow for optimal comparison of performance over time and make them more consistent with other pipeline safety measures. PHMSA modified the annual report to collect leak information for the same nine causes used in collecting the IM performance measure.

The gas transmission and gathering pipeline annual report is now filed by state (i.e., an operator whose pipeline traverses multiple states files one report for each such state). IM performance measures have been reported semi-annually by program, i.e., one report covering all pipelines within an IM program regardless of the state in which the pipelines are located. The NPRM noted that one consequence of integrating the IM performance measures into the annual report is that these measures would now be required to be reported by state.

Comments

AGA supported the changes to the annual report's cause categories and generally supported integrating the IM performance measure report with the annual report. AGA, joined by NWN, noted that this could cause some difficulties for operators with IM programs that cover multiple OPIDs, and who do not now separate IM results by individual OPID within the common program. These operators suggested a means of referring to data reported for the OPID under which a common IM program is managed rather than requiring reporting for each individual OPID within the program.

While AGA agreed that IM performance measures should be reported annually as part of the annual report, they disagreed that these measures should be reported by state. They claimed that industry does not now collect data on this basis and that the change will add significant burden with no appreciable effect on safety.

Geo Logic Environmental Services, LLC maintained that it would be overly burdensome to integrate IM performance measures with the annual report.

Response

Operators must report IM data by OPID. PHMSA recognizes that some operators manage common IM programs which include multiple OPIDs representing different system assets. IM activities, however, are conducted on individual pipeline segments (*e.g.,* in the case of assessments) or at individual locations along the pipeline (*e.g.,* in the case of repairs). Operators therefore have this data by OPID. Analyzing data by individual OPID provides a better opportunity to identify incipient problems. Operators with multiple OPIDs may have accumulated them by acquiring other pipeline systems, and problems may result from operation under the previous owner(s). Multiple OPIDs can also represent different pipeline systems of differing vintage and differing conditions. Prior treatment of pipelines by prior owners or problems associated with aging or certain types of vintage materials would be masked if IM information were reported at the common-program level. The annual report form requires reporting of IM data by individual OPID. At the same time, PHMSA needs to understand what OPIDs are included in common programs so that it can plan IM inspections appropriately and so that it can properly address any inspection findings which result. This information will now be collected and maintained as part of the National Registry of Pipeline and LNG Operators.

The issue of reporting IM information by state also affects proposed changes to hazardous liquid pipeline annual reports and is discussed below. The reporting burden is lessened, because reporting will be required annually vs. semi-annually. PHMSA has included this integration in this final rule.

(8) Modifying Hazardous Liquid Operator Telephonic Notification of Accidents Reporting Requirement

49 CFR 195.52

Proposal

In the NPRM, PHMSA proposed to require operators to have a procedure to calculate and provide a reasonable initial estimate of released product in telephonic reports to the NRC. PHMSA also proposed to require operators to provide additional telephonic reports to the NRC if significant new information becomes available during the emergency response phase of a reported event. This proposal was based in part on a recommendation from the NTSB that PHMSA modify 49 CFR 195.52 to require pipeline operators to have a procedure to calculate and provide a reasonable initial estimate of released product in the telephonic report to the NRC (NTSB Safety Recommendation P–07–07). NTSB also recommended that the hazardous liquid regulations require pipeline operators to provide an additional telephonic report to the NRC if significant new information becomes available during the emergency response (NTSB Safety Recommendation P–07–08).

Comments

API, AOPL, TransCanada, and TPA noted that estimates made quickly for immediate reports are subject to error. These commenters requested that PHMSA include a provision holding an operator harmless for over-or-under estimates in its initial reports. API, AOPL and TXOPA recommended placing the requirement for a procedure to estimate release volumes in § 195.402, "Procedural manual for operations, maintenance, and emergencies" rather than in the reporting requirements of § 195.52.

TransCanada and TXOGA requested that PHMSA provide guidance on what would constitute a significant change in information necessitating a follow-up

report to NRC. API, AOPL, OKIPA, and TXOPA suggested revising the regulatory text to limit the requirement for subsequent reports to situations in which an operator has a reasonable basis for significant revision of reported estimates. PST recommended requiring subsequent reports to be submitted "at the earliest practical moment" as is now required for initial reports.

API and AOPL commented that there is no mechanism to amend or rescind an NRC report and that one should be provided. TXOGA suggested that original and subsequent reports be retained by PHMSA for subsequent review and analysis.

Response

PHMSA recognizes that estimates of release made quickly for immediate reports are subject to error. Not all information can be known immediately with accuracy. Calculations must be based on assumptions, and those assumptions may not be correct. Still, information is needed quickly to estimate the scope of a problem and allow response by appropriate agencies/resources. This is why immediate reports to NRC are required. Operators are expected to make their best effort in making their initial estimates of release. Using a procedure to make those estimates should help improve their accuracy by allowing decisions concerning how estimates are to be calculated to be made through deliberative pre-planning rather than in haste after a major event. PHMSA has not modified this final rule to hold operators harmless for incorrect estimates, but would exercise appropriate discretion in any enforcement action that might result following an event reported to NRC in which a good faith effort was made.

Whether to place the requirement that operators have a procedure to estimate releases in §§ 195.402 or 195.52 is a matter of preference. PHMSA can see how some might consider that this requirement should be grouped with other requirements to have procedures. In the NPRM, PHMSA chose to incorporate this requirement into the provision requiring that reports be made to NRC, as recommended by NTSB. PHMSA has retained that choice in this final rule.

PHMSA does not agree that it is necessary to state in the regulation that an additional report is required for new information that provides a "reasonable basis" for modifying prior estimates. The proposed rule already limited the requirement for subsequent reports to instances in which "significant" new information becomes available. The proposal did not require a supplemental report for "any" new information. PHMSA considers that this qualifies the requirement sufficiently to allow operators to use judgment in deciding whether new information provides an appropriate basis for a supplemental report. PHMSA previously published guidance concerning changes that would be significant enough to justify a supplemental report to NRC. This guidance may be found in Advisory Bulletin ADB–02–04, published in the **Federal Register** on September 6, 2002 (67 FR 57060).

Immediate reports are made to NRC, not to PHMSA. PHMSA has no authority to change NRC processes, including establishing or changing any mechanism to amend or rescind a report or governing which data will be retained for subsequent analysis. Such changes are beyond the scope of this proceeding. PHMSA understands that NRC's current practice is not to remove reports from its database.

(9) Requiring Operators of Hazardous Liquid Pipelines to Report Pipeline Information by State on the Annual Report for Hazardous Liquid Pipelines

49 CFR 195.49

Proposal

In the NPRM, PHMSA proposed to require operators of hazardous liquid pipelines to submit certain infrastructure and IM data separately for each state a pipeline traverses.

Comments

API, AOPL, TXOPA, TPA, Spectra, and TransCanada objected to the proposal to collect information by state. TransCanada would allow collection of infrastructure data (*e.g.,* miles of pipeline) on this basis. These commenters noted that pipelines operate as systems and not by state; therefore, operators have no business reason to collect data on a by-state basis and do not currently do so. The commenters contended that given that the elements to be reported cross state lines, it would be unreasonably burdensome to require that the data be collected on a by-state basis. API and AOPL contended that contrary to the statement in the NPRM preamble which stated that the industry data team generally supported collection of data by state, is inaccurate. API and AOPL noted that in the 2004 rule that added the requirement for the annual report PHMSA acknowledged in its response to comments that mileage of hazardous liquid pipelines in each state is already available in the NPMS and that it was examining additional enhancements to NPMS that would allow collection of additional state-by-state information without imposing additional burden on operators. API and AOPL would limit collection of data by state to intrastate systems (for which an annual report would generally address only one state). API and AOPL claimed that the Regulatory Analysis supporting the NPRM was neither reasonable nor reliable because it did not consider the additional burden imposed by reporting information separately for each state.

OKIPA suggested that PHMSA obtain state based information from the states exercising jurisdiction. PST supported obtaining additional information on a by-state basis as this would increase PHMSA's ability to oversee state pipeline regulatory activities.

Response

This issue was discussed at some length during the Advisory Committee meeting discussed below. At that meeting, PHMSA agreed that it would be reasonable to roll up IM information nationally and to limit by-state reporting in the annual report for gas transmission and gathering pipelines and hazardous liquid pipelines, to infrastructure information. The Committees supported that approach. PHMSA has modified the proposed revision to the hazardous liquid pipeline annual report form along these lines and has revised this final rule to require reporting by state only for those parts of the form that indicate such reporting is required. PHMSA acknowledges that some information is available in NPMS by state, but all of the desired data is not. The NPRM discussed the difficulties involved in changing NPMS and PHMSA's uncertainty about each operator's ability to provide additional data via that system. PHMSA concludes that obtaining this information through NPMS is not practical at this time.

It is not practical to obtain state information from the states, as suggested by OKIPA. State reporting requirements vary. Additionally, states only exercise jurisdiction over intrastate pipeline systems. The only means to obtain consistent data for all pipelines is via a Federal requirement.

With respect to PST's suggestion that additional information by state would help PHMSA oversee state pipeline safety regulatory programs, PHMSA has the information it needs for this purpose. Some information will be reported by state via the annual report, as modified. PHMSA also obtains additional information directly from states that it uses in its oversight of state programs.

(10) Removing/Revising Obsolete Provisions

49 CFR 191.19, 191.27, 195.57 and 195.62

Proposal

In the NPRM, PHMSA proposed to remove or revise several provisions in light of the proposal to require electronic submission of all reports. These provisions were as follows:

- Remove § 191.19, which advises operators they may obtain, without charge, copies of paper report forms and reproduce the forms.
- Remove §§ 191.27(b) and 195.57(b), which require mailing hard copies of Offshore Pipeline Condition reports.
- Revise § 195.54 to remove the option to file an accident report by facsimile.
- Remove § 195.62, which requires operators to maintain an adequate supply of forms that are a facsimile of DOT accident report forms so that the operator may promptly report an accident.

The NPRM also indicated that hard copies of forms would continue to be available on PHMSA's Web site at *http://phmsa.dot.gov/pipeline*.

PHMSA received no specific comments on these removals/revisions and, therefore, we are adopting these removals/revisions as proposed.

(11) Updating OMB Control Numbers

49 CFR 191.21 and 195.63

Proposal

In the NPRM, PHMSA proposed to update several sections to add new OMB control numbers for the new forms (and information collection) proposed in the NPRM.

PHMSA received no public comments concerning these changes and have adopted them as proposed.

IV. Comments on Forms

In addition to comments concerning the proposed rule, PHMSA received comments on the related forms.

Comments on the Annual Report for Gas Transmission and Gathering Pipelines

Comments

INGAA, API, AOPL, and TPA commented that reporting mileage to three decimal places is more precise than is needed or justified. INGAA suggested miles be reported to the nearest tenth. The other commenters would report to the nearest mile.

Response

PHMSA agrees that reporting of mileage to three decimal places is unnecessary. At the same time, PHMSA notes that there are some pipelines less than one mile in length and for which it would be unclear whether zero or one should be reported if reporting were by mile. PHMSA has revised the form to allow reporting to one decimal place and has indicated that rounding to the nearest mile is allowed.

The annual report describes the status of a pipeline at the end of the reporting year and/or events that occurred during that year. Gathering lines that become regulated during a year should be reported as part of infrastructure on that year's annual report. Regulated events (*e.g.,* incidents) that occur during the year and following the date on which the lines become regulated should also be reported.

Part A—Operator Information

NAPSR would add CO2 to the list of commodities given that transport of CO2 as a gas is likely to become more prevalent with forthcoming carbon sequestration projects. SWGas and Paiute suggested defining "assets," as used in Part A.

INGAA and TPA recommended deleting the last boxes in question 8, "does this report represent a change from last year's final reported numbers for one or more of the following parts:" They contended that virtually all operators will experience one or more of these changes and that the rare case where none of the boxes would be checked does not warrant the inconvenience for others to respond. SWGas and Paiute requested clarifying the scope of changes that would trigger a response in question 8. NiSource commented that operators who experience no changes should not have to complete the remainder of the form. NiSource reads the form to indicate that operators with changes must complete only those sections for which changes affect the reported data while operators who do not experience any changes must complete the entire form. TPA noted that spaces are needed for operator Headquarters' state and zip code.

Response

PHMSA recognizes that carbon sequestration projects are likely to result in transport of carbon dioxide in gaseous form. At present, however, PHMSA does not have jurisdiction to regulate transportation of carbon dioxide as a gas. Legislative change would be required to establish jurisdiction; therefore, PHMSA cannot accept NAPSR's suggestion to add CO_2 as a gas to the list of commodities transported.

PHMSA accepts that the term "assets," could be confusing and has replaced this term with "pipelines" and "pipeline facilities," both of which are defined in the regulations.

PHMSA has revised Question 5 and the instructions to resolve confusion concerning how to report IM data. IM data is to be reported by individual OPID and not as part of a common program under one OPID, as discussed above. The revised question simply asks whether the pipelines and pipeline facilities under the OPID being reported are under an IM program. If not, the form indicates which parts (*i.e.,* those collecting IM-related data) the operator need not complete.

PHMSA has revised question 8 in response to the comments on this portion of the form and to comments made about a similar question on the hazardous liquid pipeline annual report form. PHMSA has combined the blocks operators would use to report changes due to mergers and acquisitions, as suggested by API and AOPL, for the hazardous liquid form because these two terms can be confused and there is no reason to report the events separately. PHMSA has also revised question 8 to indicate that operators who have experienced no changes need not complete many sections of the form for which data would be identical to that reported in the prior year. (Note that this is not applicable to reporting for calendar year 2010 given that the data on this form will be reported for the first time during that year). PHMSA concludes this will reduce the reporting burden for operators who do not experience changes to their pipeline systems. Operators who experience changes due to any of the reasons listed in question 8 must complete the entire form.

PHMSA notes the confusion regarding the intent of question 8. In particular, INGAA and TPA claimed the question was unnecessary because virtually all operators would experience one of the listed changes during any given year. PHMSA advises that simply experiencing such a change does not lead to a "yes" answer to this question. Instead, "yes" indicates that the numbers reported on the prior year's form have changed as a result of one of the listed events. PHMSA intends to use the responses to this question to understand why data that was reported changed for a given operator from year-to-year and to help prioritize its inspection activities. In addition, eliminating the need for operators who have not experienced changes that affect data reported previously to report the same data again will improve data

quality by avoiding collection of inaccurate data due to data entry errors. For example, operators who experience a modification to their pipeline (one of the listed changes) but for whom that modification results in no change to the numbers reported on the prior year's annual report would answer "no" to question 8 and would not be required to complete the bulk of the form (except for 2010). PHMSA has made editorial changes to the form to emphasize this.

PHMSA has made a number of other editorial corrections to the form, including adding space for operator headquarters' state and zip code.

Part B—Transmission Pipeline HCA (High Consequence Area) Miles

INGAA suggested deleting the number of offshore miles because there are not enough miles of offshore transmission pipeline to make the data pertinent.

Response

PHMSA will require reporting of offshore HCA miles. Although there may be few such miles, they do exist (*e.g.,* an offshore platform that includes a transmission line and is occupied by 20 or more persons). Operators who have no offshore HCAs, which PHMSA recognizes will be most operators, may enter zero in this field.

Part C—Volume Transported in Transmission Pipelines Only in Million Standard Cubic Feet (mmscf)-Miles Per Year

AGA contended that it would be unreasonably burdensome to report volume transported. INGAA and Spectra maintained that because transported gas does not necessarily traverse an entire pipeline reporting volume-miles is impractical and PHMSA should use data already collected by FERC. Atmos, TPA, SWGas, and Paiute commented that this information does not appear relevant to pipeline safety and would be difficult to collect, particularly for bi-directional pipelines. GPTC and Nicor commented that this element is impractical for distribution pipeline systems in which only a small portion of pipeline is defined as transmission due to operating pressure. They noted that it is impractical to determine how much gas flowed through these limited portions of a pipeline system and questioned the safety need for the information. NiSource and NWN also claimed that it is unclear why PHMSA needs this information and that it may be proprietary or is already available from FERC. TPA suggested that, if we retain this section, we specify the reporting basis (*e.g.,* standard temperature and pressure) because some states (*e.g.,* Texas) require reporting of volumes under other pressure bases.

Response

PHMSA recognizes that it is difficult to determine the amount of gas transported, in mmscf-miles, for pipelines with multiple locations at which gas can be collected and delivered. At the same time, an indication of the total volume of gas transported will be useful data for PHMSA's analysis of pipeline safety performance. Such information can, for example, be used to normalize analyses of different events. PHMSA has revised this part to require reporting of the total volume of gas transported under the reporting OPID during the reporting year for operators who do not operate their transmission lines as part of a distribution pipeline system. PHMSA recognizes that this will not accurately represent the volume carried in only portions of interstate gas transmission systems, but PHMSA believes this strikes an appropriate balance between the burden to calculate mmscf-miles and the need for an overall measure of relative activity of different OPID transmission volumes. PHMSA will use this information with care.

PHMSA also recognizes that it would be particularly difficult for operators of distribution pipeline systems in which only a portion of the pipeline is classified as transmission to estimate the volume of gas carried by their transmission pipelines. PHMSA has revised this part to eliminate the need to report volume transported for operators who operate transmission pipelines as part of a distribution pipeline system. Volume information for these pipelines will be collected on the distribution pipeline system annual report, which PHMSA is currently revising.

PHMSA notes that the proposed instructions for this part included a definition of mmscf as million standard cubic feet and noted that standard conditions are "normally set at 60F and 14.7 psia." PHMSA has deleted the word "normally" to make clearer that these are the conditions at which volume is to be reported. PHMSA has also revised the proposed instruction to reflect a pressure of 14.73 psia to be consistent with how FERC describes standard conditions.

Part F—Integrity Inspections Conducted and Actions Taken Based on Inspection

INGAA commented that PHMSA should make clear that only testing conducted as a result of IM requirements should be reported.

AGA contended that PHMSA has not justified collecting more detailed IM performance data. SWGas and Paiute claimed that PHMSA does not need additional data to judge the adequacy of IM. National Grid does not support reporting information beyond the number of immediate and scheduled repairs in HCAs, because additional data would cause confusion due to overlapping inspection techniques.

Atmos and TPA commented that reporting the number of assessments by tool type would overstate the mileage assessed compared with other assessment types given that operators typically run multiple tools over the same mileage as part of a complete assessment. AGA and NWN claimed that collecting repair data by assessment technique would be burdensome with no apparent safety benefit, and that information concerning assessments conducted by method has no apparent safety value. INGAA, GPTC, and NiSource recommended deleting questions concerning inspections by tool type, contending that separate collection is misleading, will lead to incorrect mileage totals, and is of marginal value. INGAA also would limit miles inspected and actions taken for hydrotests to HCA miles because that is the only area with consistent repair criteria.

Atmos and TPA also maintained that reporting the number of conditions identified for repair by various assessment techniques, particularly outside HCAs, will provide no useful information given that there are no common criteria for when repairs are required. AGA argued that repairs outside of HCA should not be reported because this data serves no safety benefit and PHMSA has not justified collecting this data. GPTC, NiSource, Nicor, NWN, Piedmont, and INGAA also supported this position.

AGA and NWN maintained it would be more useful to collect data on anomalies identified by assessment cycle (*e.g.,* baseline, first re-assessment) rather than by tool.

National Grid noted that because "one year" and "scheduled" conditions are the same under § 192.933, both terms should not be used. GPTC and Nicor would clarify that the number of anomalies within HCAs (section 2c) should be the number repaired. AGA, GPTC, NWN, SWGas, Paiute, NiSource, and Nicor suggested that consistent and more-detailed definitions are needed for the terms leak, failure, incident, and rupture if consistent reporting is to be achieved. They further suggested PHMSA consider whether events of this type are to be reported based only on IM

assessments or from all means by which they are identified. BG&E suggested that PHMSA conform terms to their use elsewhere and specifically use the terms "immediate," "scheduled," and "monitored," as used in Subpart O of Part 192, to refer to anomalies of concern under IM requirements.

Sempra Energy Utilities (Sempra) recommended modifying this part to allow an operator to reference another OPID for IM data. This would accommodate situations in which IM activities are managed under a common program for multiple OPIDs. NWN also noted that IM programs are often run in common for multiple OPIDs making it difficult to break out the data for individual OPIDs.

GPTC noted that question 5b refers to in-line inspection (ILI) even though the subject of question 5 is non-ILI techniques. NiSource would delete Part F5, since it duplicates information collected elsewhere on the form.

Response

PHMSA does not understand completely why INGAA believes that only testing conducted as a result of IM requirements should be included. If, as INGAA suggested "overtesting" (*i.e.,* testing of non-HCA miles assessed as part of an IM inspection) were included, what would be excluded for these segments? While the regulations establish maximum reassessment intervals, they also require that operators base their reassessment intervals on the identified threats, data from the last assessment and data integration (§ 192.939). Assessments that are conducted at shorter intervals than the maximums specified in the regulations provide additional data that must be considered in data integration and thus come under the provisions of IM regulations (see the response to FAQ–70 on the gas integrity IM Web site, *http://primis.phmsa.dot.gov/gasimp,* for additional discussion). Therefore, all testing on pipelines with HCAs must be reported.

Assessments that are conducted on pipelines that do not contain any HCAs are a different matter. Such pipelines are not covered by the IM provisions of the regulations. Operators are not required to report data for portions of these pipelines that they may assess for other reasons. PHMSA will consider future regulatory changes to establish requirements for reporting assessments and repair actions on pipeline segments that do not include HCAs.

Although PHMSA recognizes that there are no criteria in the regulations for when anomalies outside of HCAs must be repaired, PHMSA is aware that operators repair many anomalies outside of HCAs. PHMSA considers it important to understand when such repairs are being made and any trends (*e.g.,* are the number of repairs increasing over time). PHMSA recognizes that operators use different criteria for these repairs and that the data must therefore be used with care. This does not mean, however, that the data is not meaningful. Any data that is indicative of the condition of U.S. pipelines has value in PHMSA's analyses and decision making. PHMSA disagrees with INGAA's suggestion that repairs performed as a result of hydrotests should only be reported when they occur within HCA miles. Hydrotests identify defects, by causing leakage or a rupture, which must be repaired and, therefore, provide the most consistent "criteria" for repair of defects outside HCAs of any assessment method.

Similarly, collecting data by tool type and other assessment methods will be useful in informing PHMSA decision making and in improving PHMSA's understanding of the relative effectiveness and extent of use of various assessment methods. PHMSA recognizes that adding the miles assessed by different assessment methods provides a result that appears to overstate the number of pipeline miles actually assessed. Adding miles does, however, provide a better indicator of the number of miles by assessment method. Again, PHMSA recognizes that the totals need to be used with caution. Still, it will be appropriate to use them for some purposes, while miles inspected using individual tools (also collected in this part) or total HCA miles (collected in Part B) will be more appropriate for other uses.

PHMSA agrees that it could be more useful to collect data on the number of repairs in each assessment cycle. The effectiveness of IM regulations would be demonstrated by a reduced number in subsequent reassessments. PHMSA considers, however, that it would be more difficult to collect and use this data. New HCAs on pipelines previously assessed make it unclear how to differentiate between baseline and reassessment, for example. Given that operators now collect data per integrity assessment method trends in this data over time will better reflect the relative effectiveness of IM.

PHMSA has been careful to use terms with meanings commonly understood within the pipeline industry. The terms "leak," "failure," and "incident" are defined in the instructions consistent with ASME/ANSI B31.8S and with current regulations. PHMSA recognizes that these terms are used in other situations and will try to ensure consistent use on other forms. Use of the term "scheduled" to identify some IM anomalies is also consistent with the regulations and is not redundant with "one-year conditions." Section 192.933(c) requires that operators schedule some anomalies for remediation consistent with the scheduling provisions of ASME/ANSI B31.8S, while § 192.933(d)(2) identifies some specific anomalies as "one-year conditions." PHMSA has revised the section references on the form (which both previously referred only to § 192.933) to make this distinction more clear.

PHMSA acknowledges that question 5 in Part F inaccurately referred to ILI inspections. This question is intended to address assessments by other techniques. PHMSA has corrected this error, which eliminates the duplication NiSource noted.

We addressed above in the section on "Creating a National Registry of Pipeline and LNG Operators" comments about reporting IM data by individual OPID vs. under a common program.

Part G—Miles of HCA Baseline Assessments Completed

INGAA suggested that this section be broken into separate sub-sections for each reassessment. Atmos and TPA reported that they did not see how reporting assessments by vintage was useful. Spectra noted that HCA miles complicate the treatment of vintage given that an assessment by ILI often inspects more than just HCA mileage. A new HCA within a piggable segment, for example, may undergo a baseline assessment at the same time that other HCAs within the segment are being reassessed.

Response

At this time, PHMSA agrees that collecting data on assessment vintage (*i.e.,* first, second, etc.) is not necessary. PHMSA may revisit the need for this information as part of future activities. PHMSA has revised this part to collect data on the number of baseline miles completed and the number of reassessment miles (regardless of vintage). PHMSA expects that there will be a reduction in the number of anomalies identified in reassessments vs. initial baseline assessments, and needs this data to validate that expectation.

Part H—Miles of Pipe by Nominal Pipe Size

INGAA noted that the proposed form does not allow reporting of odd pipe sizes. The form provides for reporting of even pipe sizes specified in modern standards, but INGAA noted that intermediate sizes may exist in older systems, particularly for grandfathered pipe. INGAA also noted that the largest pipe size included in the form is 36-inch diameter and pointed out that larger pipe is being used/planned for some gas transmission pipelines.

Response

PHMSA acknowledges that odd pipe sizes may exist in some pipeline systems, including small diameter pipe (*e.g.,* 5-inch diameter) and pipe installed in older pipeline systems before pipe sizing was standardized. PHMSA has modified the form and instructions to accommodate reporting of odd pipe sizes and to include sizes larger than 36-inch diameter.

Part J—Miles of Transmission Pipe by Specified Minimum Yield Strength

AGA, NWN, SWGas, and Paiute commented that reporting pipeline mileage by specified minimum yield strength (SMYS) would be unduly burdensome because records are incomplete, grandfathered pipe may not fit into standard categories, and information technology (IT) changes would be needed to track mileage by SMYS. These commenters see no safety benefit in doing so. Atmos and TPA would also delete this section although they recognized there could be some benefit in reporting for pipelines operating under special permits or at 80% SMYS where special regulatory attention may be needed. They suggested that targeted reporting for these pipelines should be established rather than imposing an unjustified burden on all pipeline operators. TPA claimed that some operators of gathering pipelines treat all of their lines as Type A rather than determining the percentage of SMYS at which they operate and that it would be unreasonable to require operators to make this determination solely for this reporting.

NiSource noted that no allowance is made for pipelines operating at an unknown percentage of SMYS even though the regulations allow operations without this determination. For example, § 192.739 provides for determining a pressure limit for pipeline operating at an unknown percentage of SMYS. NiSource also noted that plastic and iron pipe are excluded, even though some transmission pipe is constructed of these materials. NiSource also claimed that the information collected via Part J largely duplicates information from Part K, miles of pipe by class location.

INGAA suggested that we eliminate blacked-out cells (implying that no pipeline should exist in that category) and noted that there is no offshore transmission pipeline that exceeds 72 percent SMYS.

Response

PHMSA considers this data to be important. The thresholds dividing the various categories in the table reflect regulatory requirements (*e.g.,* change in design factors) and PHMSA needs to have an understanding of the inventory of pipe to which these requirements apply. PHMSA notes that INGAA, which represents transmission pipeline operators who would tend to have pipeline across the range of allowable percentages of SMYS, did not object to reporting this data. Rather, AGA and some of its member companies expressed concerns. These companies generally operate distribution pipeline systems. While many of their systems include some transmission pipeline, the amount is relatively less and most tend to operate in the lower percentage SMYS categories. Thus, the burden for completing this section will be less for these companies.

While the regulations establish design thresholds consistent with those in this part, existing pipelines do not always fit into these neat categories. Pipe that was installed prior to the time pipeline safety regulations were initially established (i.e., pre-1970) may operate at maximum allowable operating pressures (MAOP) based on historical operation prior to that date (so-called "grandfathered pipe") and this pressure is in some cases in excess of 72 percent SMYS. Some pipe operates under special permits that allow different MAOP. Some pipe operates at MAOP greater than originally designed due to changes in class location and the allowance for pressure increase that is inherent in § 192.611. PHMSA is not persuaded by arguments that it is too hard for pipeline operators to acquire this data. Pipeline operators should acquire this data wherever possible because of its importance. Pipe operating at a higher percentage of SMYS has less safety margin. It is important that operators know where this pipe is and take this factor into account in the risk analyses required by IM regulations.

For these reasons, PHMSA has retained this part. PHMSA has made changes in response to the other comments concerning this part. PHMSA has eliminated blacked out cells. As discussed above, grandfathering, special permits, and other circumstances could result in pipe operating at various combinations of MAOP and class location and PHMSA agrees it is more appropriate to allow for data collection in all categories. Operators with no pipe in individual categories will simply enter zero. The revised form allows for pipe that operates at an unknown percentage of SMYS and for pipelines other than steel. PHMSA has also deleted the row corresponding to offshore transmission pipeline with MAOP greater than 72 percent SMYS.

The information collected in this part does not duplicate that in Part K. PHMSA agrees that the information in the two parts is related. Important information will be obtained through analyses that compare the information obtained in each of these parts. This will help PHMSA understand, for example, the amount of pipe that operates at MAOP higher than initial design due to the automatic-increase provisions in § 192.611. It is necessary to collect the data in both parts to allow this kind of correlation to be made.

Part J applies to transmission pipeline. Operators of gathering lines need not complete Part J.

Part K—Miles of Pipe by Class Location

SWGas and Paiute commented that this section appears to replicate Part B insofar as it relates to miles in HCA. They claimed it could be confusing to report miles that are not in an HCA but which must be inspected anyway under the IM program.

SWGas recommended that we exempt distribution pipeline operators that also report on transmission pipeline they operate. Many distribution operators treat all of their pipeline as Class 3 or 4 and do not perform analyses to determine accurately the class location of their transmission pipeline. SWGas opposed requiring such analyses solely to meet this reporting requirement.

Response

PHMSA agrees that reporting HCA miles in the IM program in this part duplicates Part B and has eliminated this section of Part K.

This part does not require that operators perform Class location studies if they do not do so for other purposes. Operators of distribution pipeline that treat all of their pipeline as Class 3 or 4 should report the mileage that they consider to be in each Class.

Part L1—Leaks Eliminated/Repaired During Year and Failures/Incidents in HCA

Atmos, NWN, and TPA requested clarification as to whether leaks repaired in IM assessments and reported in Part F are also to be reported in this part.

Nicor and NWN suggested reorganizing the columns for failure, leak, and incident data in order of severity to provide clarity and help assure consistent reporting. AGA noted that the failure category was omitted for gathering pipelines.

NAPSR suggested adding a column for unregulated gathering lines, as they consider that data should be collected for all gathering lines.

Response

Operators are to report all leaks both in HCAs and outside HCAs. Failures and incidents are to be reported for HCAs. This is an existing performance measure required by § 192.945 (through reference to ASME/ANSI B31.8S) that has been reported on semi-annual performance measure reports.

PHMSA agrees that reordering the columns in order of relative severity could improve clarity and has made that change.

While PHMSA agrees with NAPSR that it would be beneficial to have data for unregulated gathering lines, such lines are by definition unregulated. PHMSA cannot impose a reporting requirement on these pipelines without a regulatory change. Such changes are beyond the scope of this rulemaking.

Part N—Certifying Signature

Atmos and TPA suggested that a separate signature block be used to certify IM information because the proposed form implies certification of the entire form, which is not required. INGAA noted that the references to the parts of the form containing IM information, and for which certification is required, were incorrect.

Response

PHMSA has revised the form to make it clearer that executive certification applies only to IM information. PHMSA will also clarify this in the on-line electronic reporting system.

Instructions

Atmos and TPA commented that the instructions need to reflect electronic reporting and address the requirements for seeking alternate reporting methods.

TPA suggested that the instructions define interstate pipelines as those to subject to FERC jurisdiction "under the Natural Gas Act" rather than simply "subject to FERC jurisdiction," noting that some intrastate pipelines are subject to limited FERC jurisdiction.

NAPSR suggested defining synthetic gas. NAPSR also suggested clarifying the instructions on counting repaired leaks. For example, if a section of pipe with leaks is replaced, does PHMSA consider that one repair or must the number of leaks within the section be reported?

SWGas and Paiute contended that the definition of operator in the instructions is inconsistent with the definition in the regulations in that it introduces the term "substantial control."

INGAA suggested that the instructions for Part F, Question 4 should refer to "meeting repair criteria" rather than "exceeding." INGAA also suggested that the instructions for Part G should mirror those for Part F.

SWGas and Paiute suggested that the instructions for Part J clarify reporting for pipe that is classified as transmission under the functional aspects of the regulatory definition even though it operates at less than 20% SMYS.

Response

PHMSA has revised the instructions to address requirements for applying for alternate methods (*i.e.,* non-electronic) of data submission and to use the statutory definition of interstate pipeline from 49 USC 60101. PHMSA has included a definition of synthetic gas that is consistent with the definition in the instructions for the new incident report form. PHMSA has also reviewed and revised all definitions to be consistent with regulations.

Counting leaks has always been problematic. As NAPSR pointed out, when a section of pipe is replaced due to leakage, an operator could count the repair as one repair or as the number of leaks in the replaced section. When replaced pipe is retired in place, it may not be possible to count the number of leaks. Operators have previously been required to report the number of leaks repaired as part of their annual reports. Operators should report the number of leaks repaired based on the best data they have available. For sections replaced, but retired in place, operators should consider leak survey information to determine, to the extent practical, the number of leaks in the replaced section.

PHMSA has made editorial changes concerning repair of anomalies "meeting" repair criteria. INGAA's suggestion that the instructions for Part G mirror those for Part F was predicated on its recommended expansion of Part G so that the parts would be similar in content. As discussed above, this change is not necessary because we have simplified Part G to reflect only baseline and reassessment miles, regardless of vintage.

PHMSA does not understand the basis for confusion over whether Part J should apply to transmission pipelines operating at less than 20 percent SMYS. The proposed part explicitly included a section in the form for pipeline operating at less than or equal to 20 percent SMYS. Nevertheless, PHMSA has clarified in the instructions that Part J applies to all transmission pipeline.

Comments on the Annual Report for Hazardous Liquid Pipelines

General Comments

API and AOPL commented that mileage should be reported to the nearest mile rather than to three decimal places citing a lack of need or justification for the proposed level of precision. API and AOPL also commented that reporting by state should be limited to infrastructure data (*e.g.,* miles by state) and that by-state reporting of IM data should be required for intrastate pipelines only because interstate hazardous liquid pipelines are operated as systems and operators do not keep or track data by state. They noted that reporting all data by state would be a significant increase in burden with no corresponding increase in safety.

Response

PHMSA agrees that reporting of mileage to three decimal places is unnecessary yet notes that for those pipelines less than one mile in length it would be unclear whether zero or one should be reported, if reporting were by mile. PHMSA has revised the form to allow reporting to one decimal place and has indicated that rounding to the nearest mile is allowed.

PHMSA also agrees that reporting all IM data by state is unnecessary. PHMSA has revised the form and instructions to require that IM data be reported once for all interstate pipelines under an OPID. We will continue to require data for intrastate pipelines to be reported by state.

Part A—Operator Information

API and AOPL submitted a number of comments on this part. They recommended that PHMSA—

- Make explicit the implication in the first box of question 5 that lines that cannot affect an HCA need not be in an IM program.
- Clarify question 5 regarding how information for companies under a common IM program is to be collected. Specifically, they contended that

operators of pipelines that are under a common program should not be required to be report data that will be reported for the OPID under which the common program is managed.

- Delete question 7, which asks operators to list the states in which their inter- and intrastate pipelines are located, since this duplicates information collected elsewhere on the form.
- Combine the first two sub-blocks of Question 8, Part 3 because mergers and acquisitions can be confused.
- Revise question 4 to add space for state and zip code.

Response

PHMSA has revised Question 5 but has not accepted all of the suggestions. While in most cases pipelines that cannot affect an HCA are not in an IM program, that is not universally true. Some pipelines that cannot affect HCAs are covered by an IM program as a result of special requirements imposed by compliance orders or as conditions of a special permit, for example. PHMSA expects IM data for these pipelines to be reported as part of the annual report. IM data is to be reported by individual OPID and not as part of a common program, as discussed above. PHMSA has revised question 5 and the instructions to make this clear. The revised question simply asks whether the pipelines and pipeline facilities under the OPID being reported are under an IM program. If not, the form indicates which parts (*i.e.,* those collecting IM-related data), need not be completed.

PHMSA has revised question 6. Although we received no comments on this question, review of the form to address other comments revealed that PHMSA had omitted biofuels/ethanol as a commodity type. On August 10, 2007, PHMSA published in the **Federal Register** (72 FR 45002) a determination that transport of unblended biofuels by pipeline is under its jurisdiction and has previously revised the accident report form (PHMSA F 7000–1) to include this commodity type. Operators would select this commodity type in question 6 for pipelines that predominantly carry unblended biofuels. Transportation of biofuels blended with refined petroleum products would be reported as Petroleum Products/Refined Products. PHMSA is aware of only a limited number of miles of U.S. pipelines in Florida and Texas that currently transport unblended biofuels, but notes that some operators have expressed an interest in constructing such pipelines.

PHMSA has retained question 7. There is little burden associated with answering these questions given that operators are aware of the states in which their pipelines are located. Answering this question in Part A helps position the operator to complete the remainder of the form. The answer also provides an opportunity for PHMSA to cross-check that necessary data is, indeed, reported for all appropriate states as part of its ongoing efforts to assure data quality.

PHMSA has revised question 8 in response to the API and AOPL comment and to comments made with regard to a similar question on the gas transmission and gathering pipeline annual report form. PHMSA has combined the blocks operators would use to report changes due to mergers and acquisitions because these two terms can be confused and there is no reason to report the events separately. PHMSA has also revised question 8 to indicate that operators who have experienced no changes need not complete many sections of the form for which data would be identical to that reported in the prior year. (Note that this is not applicable to reporting on this form for calendar year 2010 because the data will be reported for the first time during that year). This will reduce the reporting burden for operators who do not experience changes to their pipeline systems. Operators who experience changes due to any of the reasons listed in question 8 must complete the entire form.

There has been some confusion regarding the intent of question 8. In particular, comments submitted with respect to the gas transmission and gathering pipeline annual report form suggested that the question was unnecessary because virtually all operators would experience one of the listed changes during any given year. In response, PHMSA notes that simply experiencing such a change does not lead to a "yes" answer to this question. Instead, "yes" indicates that the numbers reported on the prior year's form have changed as a result of one of the listed events. PHMSA intends to use the responses to this question to understand why reported data changes for a given operator from year-to-year and to help prioritize its inspection activities. In addition, by eliminating the requirement for operators who have not experienced changes that affect data reported previously to report the same data again will improve data quality by avoiding collection of inaccurate data due to data entry errors. For example, operators who experience a modification to their pipeline (one of the listed changes) but for whom that modification results in no change to the numbers reported on the prior year's annual report would answer "no" to question 8 and would not have to complete the bulk of the form (except for the reporting of calendar year 2010 data). PHMSA has made editorial changes to the form to emphasize this.

PHMSA has also changed the form to allow state and zip code information to be entered for the operator headquarters' address.

Part C—Volume Transported in Barrel-Miles

API and AOPL recommended allowing reporting for more than one commodity, adding columns for crude oil, refined products, HVL, and CO_2. They maintained that these changes would return to the intent of the current form.

Response

PHMSA had revised this part of the form to reflect the requirement that operators must file separate annual reports for each pipeline carrying a different commodity type. PHMSA recognizes that the operator files only one annual report for each pipeline system based on the commodity predominantly carried. PHMSA has restored the option to report volume for all commodities, as suggested by API and AOPL, thus eliminating the possibility of double reporting mileage of batched systems.

Part D—Miles of Pipe by Corrosion Protection and

Part H—Miles of Pipe by Nominal Pipe Size

API and AOPL suggested that we revise the titles of these parts to explicitly apply to steel pipe.

Response

Corrosion prevention, the subject of Part D, only applies to steel pipe and PHMSA has revised the title of this part accordingly. Part H applies to all pipe. PHMSA recognizes that most pipe in hazardous liquid pipeline systems is steel, nevertheless, there is some non-steel pipe in some systems. PHMSA has not revised the title of Part H and expects operators to report this data for all pipe materials.

Part F—Integrity Inspections Conducted and Actions Taken Based on Inspection

API and AOPL suggested a number of changes for this part:

- Refer to "could affect an HCA" vs. "HCA affecting." The former is defined in the regulations while the latter is not.

• Refer to "anomalies repaired" vs. "conditions repaired" for consistency with the Plastic Pipe Data Committee reporting. They would have the instructions refer to API RP 1163 for a definition of "anomaly."

• Clarify that repairs are to be reported for the year in which the repair is made rather than the year in which an assessment was conducted.

• Add actions (*e.g.,* repairs) for ruptures that occur during pressure tests.

• Add an option to question 1 for a combination ILI tool, since use of combination tools is becoming more prevalent.

• Clarify that the state identifier is required only for intrastate pipelines.

Response

PHMSA agrees it is better to use terms defined in the regulations, and has revised the form to use "could affect an HCA" rather than "HCA affecting."

The regulations refer to repairs that must be made following IM assessments as "conditions" (*i.e.,* immediate repair conditions, 60-day conditions, 180-day conditions). PHMSA has retained use of this term for those elements of questions in Part F that refer to repairs made that are required by the rule. PHMSA has revised the form to use the term "anomaly" for those elements that refer to repairs made as a result of an operator's criteria, which may be different than those in the rule. PHMSA has not adopted the suggestion to refer to API RP 1163 for the definition of anomaly. API RP 1163 is not currently incorporated by reference into the Code of Federal Regulations. Further, PHMSA considers it more important to understand anomalies that operators determine require repair. Operators may use the definition in API RP 1163 or they may use a different definition. Data concerning the number of repairs made as a result of operator-defined repair criteria should be reported in terms of the number of repairs actually made, regardless of a formal definition of the term "anomaly."

PHMSA has clarified that data to be reported for pressure test ruptures should reflect the number of repairs made. PHMSA has also revised the header for Part F to clarify that the state identifier is only applicable to intrastate pipeline systems.

PHMSA has not modified the list of tool types to include a combination tool. PHMSA recognizes that combination tools are becoming more common. When using such a tool, an operator is inspecting its pipeline using each of the tools included in the combination, and the number of miles inspected should be reported for each of those tool types. Reporting the data once for a "combination" tool would confuse the data concerning the prevalence of different ILI inspection methods.

Part G—Miles of Baseline Assessments and Reassessments Completed (HCA-Affecting Segment Miles Only)

API and AOPL would delete this part because the baseline period is over for all pipelines and collecting assessments by vintage would add confusion while adding no useful information. They further commented that PHMSA should clarify that the state identifier is only required for intrastate pipelines, if PHMSA retains this part.

Response

PHMSA has not deleted this part. Contrary to API's and AOPL's assertion, the baseline period is not over for all pipelines. The baseline period is still running for rural low-stress pipelines recently made subject to Part 195, for example. New baseline assessments can also be expected as a result of new HCAs and new pipelines. PHMSA has revised this part to require data for baseline assessments and reassessments and has eliminated the need to report mileage by the vintage of reassessment (*e.g.,* first, second). PHMSA agrees that this could be confusing, particularly when new HCAs develop near pipelines already assessed. PHMSA expects that data will show a significant drop in the number of conditions requiring repair as a result of reassessments compared to baseline assessments but does not expect the same trend between reassessments.

PHMSA has clarified that the state identifier is only required for intrastate pipeline systems.

Part J—Miles of Pipe by Specified Minimum Yield Strength

API and AOPL would limit this part to a report of pipe above or below 20% SMYS because the additional categories are of limited use.

Response

PHMSA has retained the proposed breakdown for this part. There are few categories in addition to the two suggested by API–AOPL (*i.e.,* above and below 20 percent SMYS). The limited additional data required addresses non-steel pipe. Pipeline operators should acquire this data wherever possible. This data is important to pipeline operators so that they know where this pipe is and take it into account in the risk analyses required by IM regulations.

PHMSA has also modified this part to include rural low-stress pipelines not generally subject to the safety requirements of Part 195. Section 195.48, added by rulemaking on June 3, 2008 (73 FR 31634), imposed the reporting requirements of Subpart B, including the requirement to submit annual reports, on operators of these pipelines. These reporting requirements were necessary so that PHMSA could collect data for the second phase of its rulemaking addressing rural low-stress pipelines. The data must be segregated so that it can be used for this purpose. The changes to Part J accommodate reporting by these new reporting operators and PHMSA's data needs.

Part K—Miles of Regulated Gathering Lines

API and AOPL would clarify that the first row in this part requires reporting of pipelines less than "or equal to" 20% SMYS. They would also delete the row for non-steel pipe operating at greater than 125 psi, since non-steel pipe is not allowed in hazardous liquid pipeline systems.

Response

PHMSA agrees that the first row should be "less than or equal to" 20% SMYS to be consistent with the definition of regulated gathering lines and has revised the form accordingly. PHMSA has not deleted reference to non-steel pipeline operating above 125 psi. The regulations acknowledge that some pipe of this type may exist within gathering pipeline systems (*see* 195.11(a)(3)(ii)).

Part L—HCA-Affecting Segment Miles of Pipe by Type of HCA

API and AOPL recommended revising this part to report the total onshore and offshore HCA miles and not miles by HCA type. API and AOPL contended that operators do not keep data on mileage by HCA type given that all types are treated the same within an IM program.

Response

PHMSA considers that the mileage of pipeline that could affect HCAs of various types is important to its ability to analyze risks. PHMSA also considers that this data should have value for operators performing risk analyses required by IM requirements. PHMSA has retained this part as proposed.

Part M—Breakout Tanks

API and AOPL requested that we revise this part to allow operators to alternatively report information on breakout tanks to either to the NPMS or on the annual report.

Response

We considered the past practice of allowing the option of filing breakout tank information via either the annual report or via the NPMS and determined that this option causes potential ambiguities in the data. Accordingly, we are eliminating the option to file this information via NPMS.

Instructions

API and AOPL noted that the instructions need to address electronic filing and the process for applying for alternate reporting methods. API and AOPL also suggested that the instructions refer to Appendix A of Part 195 for examples of inter- and intra-state pipelines and that the definitions in the instructions be made consistent with those used for accident report forms.

The instructions for Part G instruct reporting parties to compare the total completed and scheduled assessment mileage to the mileage reported in Part B, to identify any discrepancies, and to submit corrections via a supplemental report, as needed. API and AOPL contended that this could be interpreted to require correction of data reported in prior years based on current-year data. API and AOPL requested that PHMSA clarify its intent because this could misrepresent the IM data collected for prior years.

Response

PHMSA has revised the instructions to address the requirements to apply for non-electronic filing and to refer to Appendix A to Part 195 for further information on determining inter- and intrastate pipeline systems.

PHMSA has also clarified the instructions for Part G to explain that supplemental reports should not be submitted for prior years based on current-year data. Errors in prior year reporting that may be identified as a result of collecting and reviewing data for a new annual report should be addressed by submitting a supplemental report for the appropriate year.

Comments on the Safety-Related Condition Form

General Comment

NiSource suggested revising the form to allow for supplemental reports to address resolution of a condition or correction of previously-reported information.

Part C—Condition Information

Atmos and TPA noted that reporting the location of a condition by street address is not always appropriate and that other means of reporting conditions in rural areas should be provided. IUB agreed, noting that determining location by government land survey system (*e.g.,* township, section, range) is often most practical in the Midwest. Spectra commented that a single-point location is often inadequate to define the location of a condition that extends over some portion of a pipeline and suggested defining the location as the center of the condition or allowing for designation of endpoints.

Part D—Description of Condition

Atmos noted that a space is needed to report the percent blend for biofuels, as specified in the instructions. NAPSR suggested that CO_2 transported as a gas be added as a commodity transported in light of forthcoming carbon sequestration projects.

Instructions

Atmos commented that the instructions need to address electronic reporting and the requirements to apply for alternate reporting methods. Atmos and TPA also noted that the proposed instructions do not correlate to the proposed form, sections are in different order, and the instructions contain references that do not match the form. NAPSR requested that the instructions define synthetic gas.

Response

After considering these comments and evaluating its own information needs, PHMSA has decided to withdraw the proposed safety-related condition report and associated changes to §§ 191.25 and 195.56. PHMSA will continue to evaluate its needs and may, again, propose changes to requirements for submitting safety-related condition reports and the information to be included in such reports.

Comments on LNG Annual Report Form

General Comments

AGA, NiSource, INGAA, and Southern LNG (SLNG) commented that much of the data that would be reported on this form duplicates data currently submitted semi-annually to FERC, to the U.S. Coast Guard (USCG), or to PHMSA as a result of incidents. MidAmerican noted that terminology is inconsistent between this form and the LNG incident report form. MidAmerican also cautioned that "incidents" should not be referred to as "events." BG&E contended that this information is unnecessary given that LNG facilities are static and do not expand or change over time as do pipelines.

Part B—System Description

MidAmerican questioned the relationship of information across a given row of this part. They noted that plants can be installed on different dates, in different states, and can have significantly different storage capacities. MidAmerican also noted that this part of the proposed form included an apparent formatting error in that lines denoting rows in the table do not extend across all columns.

Part C—Releases in Past Year From Incidents and Safety-Related Conditions

BG&E contended that PHMSA should not collect this information on annual reports because some of it relates to economic issues (*e.g.,* insulation performance), rather than to safety issues. BG&E recommended that information related to incidents should be collected via the incident report form rather than annually. MidAmerican suggested we reformat this part because it is difficult to follow for operators trying to categorize releases by cause.

Part D—Other Events

AGA, NEGas and NWN recommended deleting this part. These commenters noted that other events are, by definition, not incidents. At most they are "near miss" events of limited relationship to safety and about which it will be difficult to collect consistent data. MidAmerican, NWN, and DOMAC cautioned that events reported on incident reports should not be reported again on this form, contending that summaries prepared for a different form at a different time are almost certain to result in confusion and apparent inconsistencies. MidAmerican, SWGas, and Paiute noted that this part is vague and needs clarification; they commented that several of the listed events appear to be subsets of emergency shutdown. NiSource and DOMAC recommended deleting rollovers and security breaches because these are not safety-significant events. MidAmerican maintained that both terms require better definition, noting that LNG is in constant rollover in tanks due to thermal gradients and suggesting that false activations of security systems/detectors should not be included as security breaches.

Instructions

TPA noted that the instructions need to address electronic filing and the requirements to apply for alternate reporting methods.

Response

Many LNG facilities under PHMSA jurisdiction do not fall under the

jurisdiction of either FERC or USCG and do not report to those agencies. PHMSA thus cannot rely on data reported to those agencies for a complete understanding of the LNG facilities for which it is responsible. PHMSA understands that LNG facilities experience less year-to-year change than do pipeline facilities and that it would be an unnecessary burden for LNG facility operators to report the same data on consecutive year's forms. PHMSA has revised the LNG annual report form so that operators may report there has been no change from the data reported in the prior year. In that event, operators need not complete the remainder of the form.

PHMSA agrees that there was a formatting error in Part B of the form that was posted in the docket for comment. Lines denoting rows within this part should have extended across all columns, but did not. PHMSA has revised the format of Part B to improve clarity. PHMSA considers that this change also resolves the apparent confusion about reporting of dates, locations, capacities, etc., as these now clearly relate to individual facilities.

PHMSA has also revised the final form to change the formatting of Parts C and D. As proposed, these parts were in parallel columns, which appear to have caused confusion. In the revised form, these parts each extend across the entire form, which improves clarity. PHMSA does not agree that events to be reported in Part C (*e.g.,* insulation performance) are solely economic issues with no safety significance. Events to be reported in Part C are releases of gas or LNG that result from these causes. Releases may have safety significance and are appropriately of interest to PHMSA.

PHMSA agrees that events that have been reported as incidents should not be reported again on the annual report, and has revised Part D to eliminate categories that duplicate reportable incidents. PHMSA does not agree, however, that Part D should be deleted because none of the events is of safety significance. The remaining events do not reach the threshold of reporting as incidents or safety-related conditions, but do represent safety issues. They include, for example, situations that would have been reported as safety-related conditions had they not been corrected before the report of such a condition was required. (The safety significance of the conditions is the same as safety-related conditions. The only difference is time to repair). It is important to trend these safety events. Though individually of less significance, trends in their occurrence could reveal safety problems requiring additional regulatory attention. PHMSA has retained "rollover" as an event to be reported in Part D. PHMSA disagrees that LNG is in constant rollover. PHMSA agrees that blending and mixing routinely occur within LNG tanks, but this does not constitute rollover. Rollover is a term commonly understood within the LNG industry to refer to an event in which significant stratification has occurred within a tank and, as a result, significant quantities of liquefied gas suddenly relocate due to differences in density. Rollovers have resulted in damage to storage facilities and are safety significant events for LNG carriers and their unloading operations at import terminals. PHMSA recognizes that improved designs have significantly reduced the frequency of rollover occurrence, but considers events that do occur to be significant and to require reporting. PHMSA has also retained security breaches as an element to be reported in Part D. PHMSA does not consider it necessary to explicitly exclude false activations of security systems given that element to be reported is an actual breach rather than any activation of a security alarm system.

PHMSA has revised the instructions to reflect the requirements to apply for an alternate (*i.e.,* non-electronic) reporting method.

Comments on the LNG Incident Report Form

Terminology

AGA, NWN, and NEGas noted that some terms used are not applicable to LNG operations but seem, rather, to be associated with pipelines (*e.g.,* rupture of previously damaged pipe).

Response

PHMSA has revised the form and instructions to more accurately refer to LNG facilities and assure that requested elements are relevant to LNG.

Part B—System Description

DOMAC recommended that the on-line reporting system automatically populate this information with the operator having an opportunity to override or change as needed, and that information being collected for the OPID Registry should make this practical. BG&E commented that operational information is of limited relevance for incidents and suggested deleting this part.

Response

PHMSA is not deleting this part. PHMSA agrees that information in the OPID Registry and reported on annual reports should allow this part to be automatically populated when operators complete an incident report form electronically. We will configure the on-line system to do so. At the same time, some information may change and not yet have been reported to the Registry or NPMS. For example, the status of a facility may change. A mobile facility's location may be different than originally reported. For OPIDs with multiple LNG facilities, the electronic system will be unable to identify the particular facility involved in the incident and will populate data for all facilities. The electronic system will thus afford operators the opportunity to change information that is automatically populated, including deleting information for facilities not involved in the incident. This practice will minimize the burden for completing this information, which could prove useful in understanding and following up on incidents.

Part C—Consequences

DOMAC suggested revising the form to accommodate the possible situation that no evacuation was necessary and that the area was not unsafe, in which case there would be no elapsed time to make the area safe.

Response

PHMSA has revised the form to replace the question concerning elapsed time until the area was made safe to one asking for a timeline of the incident. This avoids the implication that the situation was "unsafe." PHMSA has retained reporting for evacuations. We have revised the instructions to require that operators complete this information based on their own knowledge or based on reports by police, fire or other emergency responder. If no evacuation was needed, operators enter zero. If an estimate is not possible, operators are requested to describe why in the narrative portion of the form. Evacuation information is collected in this same manner for pipeline incidents.

Part D—Origin of Gas Leak/Problem

DOMAC suggested that "gas leak" be replaced with "release," noting that a release may have been in liquid form. BG&E recommended deleting questions related to distributed control systems (DCS), since such systems are not required, the information is of limited value, and it will be burdensome to collect. DOMAC agreed that information concerning DCS systems would be of limited value, noting that such systems do not detect all hazards (*e.g.,* fire).

TPA commented that the list in question 1 of gases potentially involved

is unnecessary given that the form is intended for LNG facilities only.

DOMAC suggested revising the title of question 2 in this part from "leak detection" to "hazard detection." DOMAC also suggested reorganizing the form to place this part before Part C; since an incident begins with a release it would be logical to begin data collection with the origin of the release rather than its consequences.

Response

PHMSA does not agree that references to DCS should be deleted. PHMSA has revised this part to address "computerized control systems," encompassing computer-based control systems that may be referred to by terms other than DCS. PHMSA recognizes that computerized control systems are not required to be installed in LNG facilities, but also notes that many facilities use such systems. It is important for PHMSA to understand how useful these systems are in identifying incidents. The information required for computerized control systems is very limited—whether one was in place and whether it initially detected the event—and thus not burdensome to report.

PHMSA has retained the list of gases in question D1. The list simply asks whether the incident originated with natural gas, LNG or "other flammable gas." Other gases are used in liquefaction processes and could be the origin of events that escalate to incidents. The definition of an incident in § 191.3 refers to events resulting in reportable consequences due to a release of "refrigerant gas," which may include other flammable gases.

PHMSA has not re-ordered the form to put Part D before Part C. While it is true that most incidents involve a release, the definition also includes emergency shutdowns and events that the operator considers significant even though they do not meet the other specified criteria. These other significant events may not involve a release (*e.g.,* security breach). Part C reports consequences, which is why the event constituted an incident in the first place. PHMSA considers that the order of these sections is appropriate.

Part E—Suspected Causes

DOMAC commented that this part appears to be taken from a pipeline context and does not fit the LNG environment.

Response

We have revised this part to be more applicable to the LNG environment.

Instructions

DOMAC noted that the instructions refer to Part 192 vs. Part 193 and will require significant revision. TPA suggested that the instructions for Part D, question 2, refer to "how was the release detected" instead of "where the leak/problem occurred." TPA also noted that the instructions need to address the requirements for reporting by methods other than electronic reporting.

Response

PHMSA has revised the instructions to be consistent with the form as modified. The instructions include an explanation of how an operator must apply to use alternate reporting methods. PHMSA notes its strong preference for electronic reporting, which will be the required method for all reports addressed in this rule. Allowance is made for alternative methods when operators demonstrate that electronic reporting involves undue burden. PHMSA will review requests for use of alternate methods critically to assure that electronic reporting would be truly burdensome before approving an alternative.

Comments on Offshore Pipeline Condition Report Form

API and AOPL noted that the form does not accommodate the likelihood that inspections will be completed with no exposed pipe identified.

Response

As discussed above, PHMSA is withdrawing this proposed form.

V. Advisory Committee Recommendations

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) considered the July 2, 2009, NPRM to revise the reporting requirements in the pipeline safety regulations at a joint meeting on December 9, 2009. A transcript of this meeting is available in the docket.

The TPSSC and THLPSSC have been established by statute to evaluate proposed pipeline safety regulations. Each committee has an authorized membership of 15 individuals with membership evenly divided between the government, industry, and the public. Each member of these committees is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety regulations.

Each committee voted to support the proposed rule, subject to comments made during committee discussion. The amendments adopted in this final rule are consistent with the recommendations of the committees except for the issue of the change in the definition of an incident and the volume of measure for release of gas. The committees recommended that PHMSA adopt a threshold of 10,000 Mcf and not the 3,000 Mcf threshold proposed in the NPRM. For the reasons stated in Section 2, "Changing the definition of an 'Incident' for gas pipelines" of the preamble, PHMSA has adopted a threshold of 3,000 Mcf. Committee comments generally were consistent with written comments filed by other commenters discussed above.

VI. Section-by-Section Analysis

1. Section 191.1—This Section is amended to include in the scope of Part 191 regulated rural gathering lines. Rural onshore regulated gathering lines were defined by a final rule published March 15, 2006 (71 FR 13289), but that rule unintentionally failed to include these newly regulated lines in the reporting requirements of Part 191.

2. Section 191.3—This Section is amended to revise the definition of an incident for gas pipelines and LNG facilities. As discussed elsewhere in this document, principal changes include the addition of a criterion defining as an incident an unintentional release of gas that results in estimated gas loss of 3 million cubic feet or more. The criterion defining an incident on the basis of $50,000 property damage is correspondingly revised to omit consideration of the cost of gas lost. This amendment also clarifies that the activation of an emergency shutdown system at an LNG facility for reasons other than an actual emergency does not constitute an incident.

3. Sections 191.7 and 195.58—These Sections are amended to require that all required reports, except safety-related condition reports and offshore condition reports, be submitted electronically unless an operator has demonstrated that electronic reporting would pose an undue burden and hardship and has obtained PHMSA approval to report by other means.

4. Section 191.9—This Section is amended to remove the exclusion for LNG facilities that are part of distribution pipeline systems. Submission of incident reports for these facilities will now be required.

5. Section 191.11—This Section is amended to remove the exclusion for LNG facilities. Submission of annual reports for these facilities will now be required.

6. Section 191.15—This Section is amended to add the requirement that

operators of LNG facilities submit written incident reports.

7. Section 191.17—This Section is amended to add the requirement that operators of LNG facilities submit annual reports.

8. Sections 191.19 and 195.62—These Sections described how to obtain copies of required forms. The Sections are being removed, because all reports for which forms have been approved will now be required to be made electronically. Copies of the forms on which the electronic reporting system is based will continue to be available on PHMSA's Web site.

9. Sections 191.21 and 195.63—These Sections are amended to include new forms that are included under OMB Control Number 2137–0522 for gas pipelines and to add new OMB control numbers for forms associated with hazardous liquid pipelines.

10. Sections 191.22 and 195.64—These Sections are added to create a National Registry of Pipeline and LNG Operators. Operators will use the Registry to obtain and change an OPID. Operators who already have one or more OPIDs are required to validate the information in PHMSA's records currently associated with those OPIDs within six months. Operators are required to notify PHMSA, via the Registry, of certain changes that affect the facilities associated with an OPID. Operators are also required to use their assigned OPID for all reporting requirements and for submissions to the NPMS. Operators are also required to notify PHMSA of changes within safety programs managed in common across multiple OPIDs (*e.g.,* where a company operates multiple pipelines) that affect the OPID the operator considers "primary" for that program (generally representing which operating entity is responsible for the program).

PHMSA has previously obtained this information from operators informally, usually from an operator's compliance personnel, as this information is needed for inspection planning. PHMSA will also use this information to analyze safety program performance and to identify trends.

11. Section 192.945—This Section is amended to reflect the integration of reporting of IM performance measures for gas transmission pipelines into the annual report. Semi-annual reporting of IM performance measures is no longer required.

12. Section 192.951—This Section is amended to require that all reports required by Subpart O of Part 192 be submitted electronically in accordance with revised § 191.7.

13. Section 193.2011—This Section is amended to require that LNG facility operators submit annual reports and reports of incidents and safety-related conditions in accordance with the requirements of Part 191.

15. Section 195.48—This Section specifies the scope of hazardous liquid pipelines subject to the reporting requirements of Subpart B of Part 195. Exceptions from portions of the annual report for pipelines not otherwise subject to Part 195 have been revised and moved to § 195.49.

15. Section 195.49—This Section is amended to require that some parts of the hazardous liquid pipeline annual report form (designated on the form) must be completed separately for each state a pipeline traverses.

16. Section 195.52—This Section is amended to require that hazardous liquid pipeline operators have a written procedure for calculating an initial estimate of the amount of product released in an accident. The amended Section also requires that operators provide an additional telephonic report if significant new information becomes available during the emergency response phase.

17. Section 195.54—This Section is revised to remove the option to submit a facsimile of the PHMSA form because all reports must now be submitted electronically.

VII. Regulatory Analyses and Notices

This final rule is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. The amendments to the data collections requirements of the Pipeline Safety Regulations addressed in this rulemaking are issued under this authority and address NTSB and GAO recommendations. This rulemaking also carries out the mandates regarding incident reporting requirements under section 15 of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Pub. L. No. 109–468, Dec. 29, 2006).

Executive Order 12866 and DOT Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the OMB. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Overall, the costs of the final rule are approximately $1.6 million per year. The present value of this cost over ten years at a seven percent discount rate is approximately $11 million. Those costs cover changes to the 49 CFR to enhance general data and data management improvements for pipelines.

The average of the present value of net benefits over ten years at a seven percent discount rate is approximately $73 million.

The benefits of the final rule enhance PHMSA's ability to understand, measure, and assess the performance of individual operators and industry as a whole; integrate pipeline safety data in a way that will allow a more thorough, rigorous, and comprehensive understanding and assessment of risk; expand and simplify existing electronic reporting by operators; improve the data and analyses PHMSA relies on to make critical, safety-related decisions; and facilitate PHMSA's allocation of inspection and other resources based on a more accurate accounting of risk.

A comparison of the benefits and costs of the rule results in positive net benefits. The present value of net benefits (the excess of benefits over costs) for the final rule is approximately $73 million using a seven percent discount rate. A copy of the regulatory evaluation is available for review in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities. The Regulatory Flexibility Act requires that Federal agencies take small entities' concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. The requirements imposed in this final rule will affect hazardous liquid, natural gas pipelines (distribution and transmission), and LNG facility operators.

The Small Business Administration (SBA) size standards for hazardous liquid operators are companies with less than 1,500 employees, including employees of parent corporations. The SBA size standards are $6.5 million in annual revenues for the natural gas transmission pipeline industry and 500 employees for the natural gas distribution industry. PHMSA has reviewed the data it collects from the hazardous liquid pipeline industry and has estimated there are approximately 220 small hazardous liquid pipeline operators, 475 natural gas transmission

pipeline operators, and 54 LNG facility operators that may be considered small entities. The rule could result in a significant adverse economic impact on small entities if the estimated average annual costs attributed to the rule exceed one percent of their annual revenues. Since the average cost of the rule for each small pipeline operator affected by the rule is modest—estimated at $6,691 for each hazardous liquid pipeline operator, $461 for each natural gas transmission operator and $913 for each LNG facility operator—PHMSA concludes that there will not be a significant impact on a substantial number of small pipeline operators.

Executive Order 13175

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This final rule has resulted in revisions to several information collections that have either been approved by OMB, or have been submitted to OMB for approval. The following list contains the approved information collection and its approval information:

	OMB Control No.	Info collection title	Expiration date	Approved burden hours
1	2137–0522	Incident and Annual Reports for Gas Pipeline Operators	11/30/2011	53,627

The following list contains the information collections that have been submitted to OMB for approval. When approval is received from OMB on these information collections, PHMSA will publish a notice announcing their approval in the **Federal Register**:

	OMB Control No.	Info collection title
1	2137–0047	Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting
2	2137–0614	Pipeline Safety: New Reporting Requirements for Hazardous Liquid Pipeline Operators; Hazardous Liquid Annual Report.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

National Environmental Policy Act

PHMSA analyzed the proposed rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and DOT Order 5610.1C, and preliminarily determined the action would not significantly affect the quality of the human environment. We received no comment on this determination. Therefore, we conclude that this action will not significantly affect the quality of the human environment.

Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132 ("Federalism"). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule does not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This final rule is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477) or visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 191

Pipeline Safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 193

Pipeline safety, Fire prevention, Security measures, and Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY–RELATED CONDITION REPORTS

■ 1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124, and 49 CFR 1.53.

■ 2. In § 191.1, paragraph (b)(4) is revised to read as follows:

§ 191.1 Scope.

* * * * *

(b) * * *

(4) Onshore gathering of gas—

(i) Through a pipeline that operates at less than 0 psig (0 kPa);

(ii) Through a pipeline that is not a regulated onshore gathering line (as determined in § 192.8 of this subchapter); and

(iii) Within inlets of the Gulf of Mexico, except for the requirements in § 192.612.

■ 3. In § 191.3, the definition of "Incident" is revised to read as follows:

§ 191.3 Definitions.

* * * * *

Incident means any of the following events:

(1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

(i) A death, or personal injury necessitating in-patient hospitalization;

(ii) Estimated property damage of $50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;

(iii) Unintentional estimated gas loss of three million cubic feet or more;

(2) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2) of this definition.

* * * * *

■ 4. In § 191.5, the section heading and paragraph (b) introductory text are revised to read as follows:

§ 191.5 Immediate notice of certain incidents.

* * * * *

(b) Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800–424–8802 (in Washington, DC, 202 267–2675) or electronically at *http://www.nrc.uscg.mil* and must include the following information:

* * * * *

■ 5. Section 191.7 is revised to read as follows:

§ 191.7 Report submission requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an operator must submit each report required by this part electronically to the Pipeline and Hazardous Materials Safety Administration at *http://opsweb.phmsa.dot.gov* unless an alternative reporting method is authorized in accordance with paragraph (d) of this section.

(b) *Exceptions.* An operator is not required to submit a safety-related condition report (§ 191.25) or an offshore pipeline condition report (§ 191.27) electronically.

(c) *Safety-related conditions.* An operator must submit concurrently to the applicable State agency a safety-related condition report required by § 191.23 for intrastate pipeline transportation or when the State agency acts as an agent of the Secretary with respect to interstate transmission facilities.

(d) *Alternative Reporting Method.* If electronic reporting imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP–20, 1200 New Jersey Avenue, SE, Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202–366–8075, or electronically to *informationresourcesmanager@dot.gov* or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

■ 6. In § 191.9, paragraph (c) is revised to read as follows:

§ 191.9 Distribution system: Incident report.

* * * * *

(c) Master meter operators are not required to submit an incident report as required by this section.

■ 7. Section 191.11 is revised to read as follows:

§ 191.11 Distribution system: Annual report.

(a) *General.* Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system must submit an annual report for that system on DOT Form PHMSA F 7100.1–1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

(b) *Not required.* The annual report requirement in this section does not apply to a master meter system or to a petroleum gas system that serves fewer than 100 customers from a single source.

■ 8. Section 191.15 is revised to read as follows:

§ 191.15 Transmission systems; gathering systems; and liquefied natural gas facilities: Incident report.

(a) *Transmission or Gathering.* Each operator of a transmission or a gathering pipeline system must submit DOT Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5 of this part.

(b) *LNG.* Each operator of a liquefied natural gas plant or facility must submit DOT Form PHMSA F 7100.3 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5 of this part.

(c) *Supplemental report.* Where additional related information is obtained after a report is submitted under paragraph (a) or (b) of this section, the operator must make a supplemental report as soon as practicable with a clear reference by date to the original report.

■ 9. Section 191.17 is revised to read as follows:

§ 191.17 Transmission systems; gathering systems; and liquefied natural gas facilities: Annual report.

(a) *Transmission or Gathering.* Each operator of a transmission or a gathering pipeline system must submit an annual report for that system on DOT Form PHMSA 7100.2.1. This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011.

(b) *LNG.* Each operator of a liquefied natural gas facility must submit an annual report for that system on DOT Form PHMSA 7100.3–1 This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011.

§ 191.19 [Removed]

■ 10. Section 191.19 is removed.

■ 11. Section 191.21 is revised to read as follows:

§ 191.21 OMB control number assigned to information collection.

This section displays the control number assigned by the Office of Management and Budget (OMB) to the information collection requirements in this part. The Paperwork Reduction Act requires agencies to display a current control number assigned by the Director

of OMB for each agency information collection requirement.

OMB CONTROL NUMBER 2137–0522

Section of 49 CFR Part 191 where identified	Form No.
191.5	Telephonic.
191.9	PHMSA 7100.1, PHMSA 7100.3.
191.11	PHMSA 7100.1–1, PHMSA 7100.3–1.
191.15	PHMSA 7100.2.
191.17	PHMSA 7100.2–1.
191.22	PHMSA 1000.1.

■ 12. Section 191.22 is added to read as follows:

§ 191.22 National Registry of Pipeline and LNG Operators.

(a) OPID Request. Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain on OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with § 191.7.

(b) OPID validation. An operator who has already been assigned one or more OPID by January 1, 2011, must validate the information associated with each OPID through the National Registry of Pipeline and LNG Operators at *http://opsweb.phmsa.dot.gov,* and correct that information as necessary, no later than June 30, 2012.

(c) Changes. Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at *http://opsweb.phmsa.dot.gov* of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs $10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new pipeline; or

(iii) Construction of a new LNG plant or LNG facility.

(2) An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs:

(i) A change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs.

(ii) A change in the name of the operator;

(iii) A change in the entity (*e.g.,* company, municipality) responsible for an existing pipeline, pipeline segment, pipeline facility, or LNG facility;

(iv) The acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to Part 192 of this subchapter; or

(v) The acquisition or divestiture of an existing LNG plant or LNG facility subject to Part 193 of this subchapter.

(d) Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this subchapter and for submissions to the National Pipeline Mapping System.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 13. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 14. In § 192.945, paragraph (a) is revised to read as follows:

§ 192.945 What methods must an operator use to measure program effectiveness?

(a) *General.* An operator must include in its integrity management program methods to measure whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7 of this part), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit the four overall performance measures as part of the annual report required by § 191.17 of this subchapter.

■ 15. Section 192.951 is revised to read as follows:

* * * * *

§ 192.951 Where does an operator file a report?

An operator must file any report required by this subpart electronically to the Pipeline and Hazardous Materials Safety Administration in accordance with § 191.7 of this subchapter.

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

■ 16. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118, and 49 CFR 1.53.

■ 17. Section 193.2011 is revised to read as follows:

§ 193.2011 Reporting.

Incidents, safety-related conditions, and annual pipeline summary data for LNG plants or facilities must be reported in accordance with the requirements of Part 191 of this subchapter.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 18. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118, and 49 CFR 1.53.

■ 19. Section 195.48 is revised to read as follows:

§ 195.48 Scope.

This subpart prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This subpart applies to all

pipelines subject to this part and, beginning January 5, 2009, applies to all rural low-stress hazardous liquid pipelines.

■ 20. Section 195.49 is revised to read as follows:

§ 195.49 Annual report.

Each operator must annually complete and submit DOT Form PHMSA F 7000–1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

■ 21. Section 195.52 is revised to read as follows:

§ 195.52 Immediate notice of certain accidents.

(a) Notice requirements. At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, the operator of the system must give notice, in accordance with paragraph (b) of this section, of any failure that:

(1) Caused a death or a personal injury requiring hospitalization;

(2) Resulted in either a fire or explosion not intentionally set by the operator;

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000;

(4) Resulted in pollution of any stream, river, lake, reservoir, or other similar body of water that violated applicable water quality standards, caused a discoloration of the surface of the water or adjoining shoreline, or deposited a sludge or emulsion beneath the surface of the water or upon adjoining shorelines; or

(5) In the judgment of the operator was significant even though it did not meet the criteria of any other paragraph of this section.

(b) Information required. Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800–424–8802 (in Washington, DC, 202–267–2675) or electronically at *http://www.nrc.uscg.mil* and must include the following information:

(1) Name, address and identification number of the operator.

(2) Name and telephone number of the reporter.

(3) The location of the failure.

(4) The time of the failure.

(5) The fatalities and personal injuries, if any.

(6) Initial estimate of amount of product released in accordance with paragraph (c) of this section.

(7) All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages.

(c) Calculation. A pipeline operator must have a written procedure to calculate and provide a reasonable initial estimate of the amount of released product.

(d) New information. An operator must provide an additional telephonic report to the NRC if significant new information becomes available during the emergency response phase of a reported event at the earliest practicable moment after such additional information becomes known.

■ 22. In § 195.54, paragraph (a) is revised to read as follows:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000–1.

* * * * *

■ 23. Section 195.58 is revised to read as follows:

§ 195.58 Report submission requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an operator must submit each report required by this part electronically to PHMSA at h*ttp://opsweb.phmsa.dot.gov* unless an alternative reporting method is authorized in accordance with paragraph (d) of this section.

(b) *Exceptions.* An operator is not required to submit a safety-related condition report (§ 195.56) or an offshore pipeline condition report (§ 195.67) electronically.

(c) *Safety-related conditions.* An operator must submit concurrently to the applicable State agency a safety-related condition report required by § 195.55 for an intrastate pipeline or when the State agency acts as an agent of the Secretary with respect to interstate pipelines.

(d) *Alternate Reporting Method.* If electronic reporting imposes an undue burden and hardship, the operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP–20, 1200 New Jersey Avenue, SE., Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202–366–8075, or electronically to "*information resourcesmanager@dot.gov*" to make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

§ 195.62 [Removed]

■ 24. Section 195.62 is removed.

■ 25. Section 195.63 is revised to read as follows:

§ 195.63 OMB control number assigned to information collection.

The control numbers assigned by the Office of Management and Budget to the hazardous liquid pipeline information collection pursuant to the Paperwork Reduction Act are 2137–0047, 2137–0601, 2137–0604, 2137–0605, 2137–0618, and 2137–0622.

■ 26. Section 195.64 is added to read as follows:

§ 195.64 National Registry of Pipeline and LNG Operators.

(a) OPID Request. Effective January 1, 2012, each operator of a hazardous liquid pipeline or pipeline facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID or a change to an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with § 195.58.

(b) OPID validation. An operator who has already been assigned one or more OPID by January 1, 2011 must validate the information associated with each such OPID through the National Registry of Pipeline and LNG Operators at *http://opsweb.phmsa.dot.gov,* and correct that information as necessary, no later than June 30, 2012.

(c) Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at *http://*

opsweb.phmsa.dot.gov, of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs $10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new hazardous liquid pipeline; or

(iii) Construction of a new pipeline facility.

(2) An operator must notify PHMSA of any following event not later than 60 days after the event occurs:

(i) A change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs.

(ii) A change in the name of the operator;

(iii) A change in the entity (*e.g.,* company, municipality) responsible for operating an existing pipeline, pipeline segment, or pipeline facility;

(iv) The acquisition or divestiture of 50 or more miles of pipeline or pipeline system subject to this part; or

(v) The acquisition or divestiture of an existing pipeline facility subject to this part.

(d) Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this subchapter and for submissions to the National Pipeline Mapping System.

Issued in Washington, DC, on November 9, 2010, under the authority delegated in 49 CFR Part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–29087 Filed 11–24–10; 8:45 am]

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November 26, 2010

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Revision to Electric Reliability Organization Definition of Bulk Electric System; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–18–000; Order No. 743]

Revision to Electric Reliability Organization Definition of Bulk Electric System

Issued November 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, pursuant to section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) adopts, with modifications, the proposal outlined in its March 18, 2010 Notice of Proposed Rulemaking to require the Electric Reliability Organization (ERO) to revise its definition of the term "bulk electric system."[2] The Commission directs the ERO, through the ERO's Reliability Standards Development Process, to revise the definition to address the Commission's technical concerns, as discussed fully below, and ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network. The Commission believes that the best way to accomplish these goals is to eliminate the regional discretion in the current definition, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities that are not necessary for operating the interconnected transmission network. However, this Final Rule allows the ERO, in accordance with Order No. 693, to develop an alternative proposal for addressing the Commission's concerns with the present definition with the understanding that any such alternative must be as effective as, or more effective than, the Commission's proposed approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability.

DATES: *Effective Date:* This Final Rule will become effective January 25, 2011.

FOR FURTHER INFORMATION CONTACT:

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[1] 16 U.S.C. 824o.

[2] *Revision to Electric Reliability Organization Definition of Bulk Electric System,* Notice of Proposed Rulemaking, 75 FR 14097 (Mar. 24, 2010), FERC Stats. & Regs. ¶ 32,654 (2010).

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. In this Final Rule, pursuant to section 215 of the FPA,[3] the Commission adopts, with modifications described below, the proposal set forth in its March 18, 2010 Notice of Proposed Rulemaking (NOPR) requiring the Electric Reliability Organization (ERO) to revise its definition of the term "bulk electric system."[4] The Commission directs the ERO, through the ERO's Reliability Standards Development Process, to revise the definition to address the Commission's technical concerns, as discussed fully below, and ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network. The Commission believes that the best way to accomplish these goals is to eliminate the regional discretion in the current definition, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities that are not necessary for operating the interconnected transmission network. However, this Final Rule allows the ERO, in accordance with Order No. 693, to develop an alternative proposal for addressing the Commission's concerns with the present definition with the understanding that any such alternative must be as effective as, or more effective than,[5] the Commission's proposed approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability.[6]

2. In Order No. 693, the Commission noted its concern that the current "bulk electric system" definition has the potential for gaps in coverage of facilities, and indicated that it would revisit the issue. This Final Rule is the next step towards addressing the Commission's concerns. The approved changes will help ensure reliability and consistency in the bulk electric system classification throughout the interconnected United States. The Commission takes this action as a continuation of Order No. 693's efforts to ensure that the mandatory Reliability Standards fulfill the intent of Congress in enacting section 215 of the FPA to protect reliability of the nation's Bulk-Power System. The aim of the Final Rule is to eliminate inconsistencies across regions, eliminate the ambiguity created by the current discretion in NERC's definition of bulk electric system, provide a backstop review to ensure that any variations do not compromise reliability, and ensure that facilities that could significantly affect reliability are subject to mandatory rules. The Commission is not adding any new or modified text to its regulations.

I. Background

A. Section 215 of the FPA

3. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) was enacted into law. Title XII of EPAct 2005 added a new section 215 to the FPA,[7] which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[8]

[3] 16 U.S.C. 824o.

[4] *Revision to Electric Reliability Organization Definition of Bulk Electric System,* Notice of Proposed Rulemaking, 75 FR 14097 (Mar. 24, 2010), FERC Stats. & Regs. ¶ 32,654 (2010).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 31 (2007), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] *See, e.g., Version One Regional Reliability Standard for Resource and Demand Balancing,* 133 FERC ¶ 61,063, at P 14 (2010) (Noting the Commission's concern that approving a proposed Reliability Standard may result in reduced reliability). In addition, as a general matter, any proposed regional difference must be: (1) More stringent than the continent-wide definition, including a regional difference that addresses matters that the continent-wide Reliability Standard does not, or (2) necessitated by a physical difference in the Bulk-Power System. *See Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability* Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 291 (2006), *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005) (codified at 16 U.S.C. 824o).

[8] *See* 16 U.S.C. 824o(e)(3).

4. In February 2006, the Commission issued Order No. 672 [9] in which the Commission certified one organization, the North American Electric Reliability Corporation (NERC), as the ERO.[10]

B. Order No. 693

5. On March 16, 2007, in Order No. 693, pursuant to section 215(d) of the FPA,[11] the Commission approved 83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards developed by NERC, the Commission-certified ERO. In addition, Order No. 693 addressed the applicability of mandatory Reliability Standards to the statutorily defined Bulk-Power System.

6. In Order No. 693, the Commission explained that section 215(a) of the FPA broadly defines the Bulk-Power System as:

> Facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) [and] electric energy from generating facilities needed to maintain transmission system reliability.[12]

The Commission also approved NERC's definition of "bulk electric system," which is an integral part of the NERC Reliability Standards and is included in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary):

> As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.[13]

7. The Commission approved NERC's definition of "bulk electric system" with reservations. The Commission stated in Order No. 693 that, "at least for an initial period, the Commission will rely on the NERC definition of 'bulk electric system' and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards." [14] In approving the use of NERC's definition of "bulk electric system," the Commission stated that "[it] remains concerned about the need to address the potential for gaps in coverage of facilities." [15]

C. NERC's June 14, 2007 Filing

8. In a June 14, 2007 filing, NERC submitted the regional definitions of "bulk electric system." [16] NERC represented that "[e]ach Regional Entity utilizes the definition of bulk electric system in the [NERC Glossary of Terms Used in Reliability Standards]; however, as permitted by that definition * * * several Regional Entities define specific characteristics or criteria that the Regional Entity uses to identify the bulk electric system facilities for its members.[17] In addition, the Reliability Standards apply to load shedding and special protection relay facilities below 100 kV, which are monitored by Regional Entities, in compliance with NERC's Reliability Standards." [18]

9. As noted in the NOPR, NERC's June 2007 Filing indicated that NPCC uses the NERC definition of "bulk electric system" supplemented by additional criteria. Unlike the supplemental criteria of other Regional Entities, however, NPCC utilizes a significantly different approach to identifying bulk electric system elements. According to NERC, NPCC identifies elements of the bulk electric system using an impact-based methodology, as opposed to a voltage-based methodology. Further, as part of its approach to defining the "bulk electric system," NPCC includes its own definition of "bulk power system." [19]

10. According to NERC, NPCC analyzes all system elements within its footprint regardless of size (voltage) to determine their impact based on its "bulk electric system" definition. NPCC also utilizes a guidance document, which provides further information on the NPCC definition of "bulk power system" and how it is applied.[20]

D. NPCC's Identification of Bulk Electric System Facilities

11. In a December 2008 Order, the Commission directed NERC and NPCC to submit to the Commission a comprehensive list of bulk electric system facilities located within the United States portion of the NPCC region.[21] The Commission explained that there appeared to be conflicting lists of bulk electric system elements developed by one of the balancing authorities in the United States portion of the NPCC region and it was not clear which, if any, of the lists were submitted to NPCC or approved by NPCC's Task Force on System Studies. In a compliance filing, NERC and NPCC indicated that the "NPCC Approved Bulk Electric System List" of June 2007 was the only listing of bulk electric system facilities approved by NPCC and is the current list of facilities within the U.S. portion of NPCC to which the NERC Reliability Standards apply.[22]

---

[9] Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212.

[10] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006) (certifying NERC as the ERO responsible for the development and enforcement of mandatory Reliability Standards), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[11] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 (directing improvements to 56 of the 83 approved Reliability Standards and leaving 24 Reliability Standards as pending until further information is provided), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[12] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 76.

[13] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 75 n.47 (quoting NERC's definition of "bulk electric system").

[14] *Id.* P 75; *see also* Order No. 693–A, 120 FERC ¶ 61,053 at P 19 ("the Commission will continue to rely on NERC's definition of bulk electric system, with the appropriate regional differences, and the registration process until the Commission determines in future proceedings the extent of the Bulk-Power System").

[15] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 77 (footnotes omitted). For example, the Commission noted that some regional definitions of bulk electric system exclude facilities below 230 kV and transmission lines that serve Washington, DC and New York City and the Commission stated its intent to address this matter in a future proceeding. *Id.*

[16] NERC Informational Filing in Response to Paragraph 77 of Order No. 693, Docket No. RM06–16–000 (Jun. 14, 2007) (June 2007 Filing).

[17] *Id.* at 7. NERC also noted that the Texas Regional Entity, Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization, and SERC Reliability Corporation use the NERC definition of bulk electric system without modification. In a supplemental filing, NERC informed the Commission that Western Electricity Coordinating Council (WECC) uses the NERC definition alone in its implementation of Regional Entity activities. *See* NERC Supplemental Informational Compliance Filing, Docket No. RM06–16–000 (Mar. 6, 2009). Three other Regional Entities, Reliability*First* Corporation (ReliabilityFirst), Southwest Power Pool (SPP Regional Entity), and Northeast Power Coordinating Council, Inc. (NPCC), stated that they use the NERC definition supplemented with additional criteria. For example, SPP Regional Entity indicated that it uses the criteria specified in the NERC Statement of Registry Criteria (with one exception). ReliabilityFirst supplemented the NERC definition with specific voltage-based inclusions and exclusions. For example, ReliabilityFirst includes "lines operated at voltage of 100 kV or higher." June 2007 Filing at 10. ReliabilityFirst excludes certain radial facilities, balance of generating plant control and operation functions, and "all other facilities operated at voltages below 100 kV."

[18] June 2007 Filing at 7.

[19] "The interconnected electrical systems within northeastern North America comprised of system elements on which faults or disturbances can have a significant adverse impact outside of the local area." *Id.,* Attachment 1 (NPCC Document A–10, Classification of Bulk Power System Elements (Apr. 28, 2007)).

[20] *Id.*

[21] *North American Electric Reliability Corp.,* 125 FERC ¶ 61,295 (2008) (December 2008 Order).

[22] NERC and NPCC Compliance Filing at 5, Docket No. RC09–3–000 (Feb. 20, 2009). The February 20 Compliance Filing also indicated that the NPCC approved list of bulk electric system elements was not developed pursuant to NPCC's Document A–10, *Classification of Bulk Power System Elements,* identified in the June 2007 Filing.

The filing indicated that a majority of the 115 kV and 138 kV transmission facilities in the NYISO Balancing Authority Area of the NPCC region are excluded from the NPCC list of bulk electric system facilities, including those associated with nuclear power plants, and thus are excluded from compliance with mandatory Reliability Standards.[23] The information provided by NPCC also indicated that numerous transmission lines at 100 kV or above that interconnect with registered generation facilities are excluded from NPCC's list of bulk electric system facilities.

12. In September 2009, NERC and NPCC submitted a compliance filing in which NPCC evaluated the impact and usefulness of a 100 kV "bright-line" "bulk electric system" definition as well as another optional method, which utilizes Transmission Distribution Factor calculations to determine reliability impacts. The NPCC definition would exclude radial network portions of the transmission system, as opposed to radial lines.[24] However, NPCC stated that it continues to believe that its current impact-based approach provides an adequate level of reliability and, therefore, intends to continue to apply the impact-based approach in classifying its bulk electric system elements.[25]

E. Notice of Proposed Rulemaking

13. On March 18, 2010, the Commission issued a NOPR proposing to direct NERC to revise the definition of "bulk electric system" in the NERC Glossary. The current "bulk electric system" definition provides Regional Entities discretion to define "bulk electric system," including the ability to exclude facilities 100 kV or above, without ERO or Commission oversight. The Commission's proposed revised definition would continue to include all facilities rated above 100 kV and eliminate regional variations, providing a consistent identification of bulk electric system facilities across the nation's reliability regions. The proposal called for Commission and NERC approval for exempting facilities that would otherwise qualify as part of the bulk electric system on a facility-by-facility basis.

14. The NOPR identified inconsistencies between regions that resulted from the existing definition, such as NPCC not including two 115 kV transmission lines as part of the bulk electric system in its region even though the sections of these same lines that connect to PJM's balancing authority area are considered bulk electric system elements within the ReliabilityFirst footprint. As an additional example, seven higher voltage (*e.g.,* 230 kV, 345 kV, and 500 kV) transmission facilities (some connecting to nuclear power plants) excluded from the list of bulk electric system facilities in NPCC would be included in other regions. Further, the NOPR provided several examples of disturbances that either began on or were propagated by 100–200 kV facilities including a February 26, 2008 event in FRCC originating at a 138 kV facility that resulted in the loss of 24 transmission lines and 4,300 MW of generation.

15. The Commission issued the NOPR on March 18, 2010, and required that comments be filed within 45 days after publication in the **Federal Register**.[26] More than eighty comments and reply comments to the NOPR proposal were submitted to the Commission.[27] Upon consideration of the comments, the Commission modifies certain proposals from the NOPR in this Final Rule, as described below.

II. Discussion

A. Overview

16. After consideration of the comments submitted, the Commission adopts the NOPR's proposal with some modifications. The Commission directs the ERO to revise the definition of "bulk electric system" through the NERC Standards Development Process to address the Commission's concerns discussed herein. The Commission believes the best way to address these concerns is to eliminate the Regional Entities' discretion to define "bulk electric system" without ERO or Commission review, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for excluding facilities that are not necessary to operate an interconnected electric transmission network. However, NERC may propose a different solution that is as effective as, or superior to, the Commission's proposed approach in addressing the Commission's technical and other concerns so as to ensure that all necessary facilities are included within the scope of the definition.

1. Definition of Bulk Electric System

(a) Commission Authority

17. In the NOPR, the Commission proposed, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to require NERC to submit a revised NERC definition of "bulk electric system" that provides a 100 kV threshold for facilities that are included in the bulk electric system and eliminates the currently-allowed discretion of a Regional Entity to define "bulk electric system" within its system without NERC or Commission oversight.

(1) Comments

18. Several commenters argue that the Commission's proposal exceeds its statutory authority.[28] Other commenters contend that the Commission's proposal is inconsistent with the statutory regime envisioned in section 215 of the FPA, requiring the Commission to defer to the ERO on technical issues and for the ERO to have primary responsibility for developing specific Reliability Standards.

(i) NERC Standards Development Process and Deference to NERC and the Regional Entities

19. NERC supports the Commission's objectives of ensuring a common understanding and consistent application of "bulk electric system" across the regions, while allowing variations to the definition based on reliability. However, NERC objects to the Commission making unilateral decisions with respect to the definition, as it did in the NOPR, rather than allowing this issue to be addressed through the NERC Reliability Standards

Rather, the approved NPCC list was developed pursuant to an earlier version of the NPCC impact-based methodology.

[23] In addition, NPCC excludes approximately seven higher voltage (*e.g.,* 230 kV, 345 kV and 500 kV) transmission facilities, some connecting to nuclear power plants.

[24] NERC and NPCC Compliance Filing and Assessment of Bulk Electric System Report, Docket No. RC09–3–000 (Sep. 21, 2009). NPCC would define "radial portions of the transmission system to include (1) an area serving load that is connected to the rest of the network at a single transmission substation at a single transmission voltage by one or more transmission circuits; (2) tap lines and associated facilities which are required to serve local load only; (3) transmission lines that are operated open for normal operation; or (4) additionally as an option, those portions of the NPCC transmission system operated at 100 kV or higher not explicitly designated as a bulk electric system path for generation which have a one percent or less participation in area, regional or inter regional power transfers. *Id.* at 11.

[25] *Id.* at 7–8; *see also id.* at 14 ("If directed by the Commission to adopt the developed [bulk electric system] definition for U.S. Registered Entities within the NPCC footprint, NPCC would need additional time to carefully consider and develop a more extensive and detailed implementation plan.").

[26] *See* 75 FR 14097 (Mar. 24, 2010).

[27] A list of commenters appears in Appendix A.

[28] *See, e.g.,* APPA/NRECA, NYPSC, NYSRC, EEI, Joint Western Commenters, NERC, Snohomish, Tacoma Power, and PGE. Note that although the parties we have identified as the "Joint Western Commenters" submitted separate comments, the comments were virtually identical. Consequently, we cite their comments as a single group.

Development Process.[29] NERC states that the NERC Glossary of Terms is part-and-parcel of the Reliability Standards and therefore falls under the same section 215 process. NERC argues that the Commission may order the ERO, pursuant to section 215(d)(5) of the FPA, to submit a proposed Reliability Standard or modification to a Reliability Standard to the Commission. Following this submission, NERC continues, the Commission may then approve the proposal or remand it to the NERC Reliability Standards Development Process for further consideration.

20. NERC states that by directing this change, the Commission is bypassing the NERC Reliability Standards Development Process, and the Commission will not have the opportunity to consider NERC's guidance in developing an equally effective and perhaps superior alternative. NERC states that the approach in the Commission's NOPR would accomplish indirectly that which it is prohibited from doing directly, in contravention of well-established judicial precedent. NERC notes that the Commission refrained from taking similar unilateral action in Order No. 693. NERC requests the Commission clarify in the Final Rule that any modification to the definition of bulk electric system be accomplished through the NERC Reliability Standards Development Process.

21. Similarly, EEI, Duke Energy, APPA/NRECA, and other commenters assert that the Commission should defer to the NERC Reliability Standards Development Process, and allege that the proposal unreasonably departs from the Commission's precedent in Order No. 693.

22. Snohomish also asserts that the proposed rule fails to defer to the technical expertise of the regional reliability organizations and inappropriately interferes in the local work of Snohomish's Board regarding decisions on levels of service.

23. TAPS states that Congress did not intend for the Commission to undertake a facility-by-facility review of all facilities above 100 kV, and that the proposed rule is contrary to section 215's apportionment of primary responsibility for reliability administration to the ERO.[30] Additionally, TAPS states that the Commission's proposed facility-by facility review would not satisfy section 215's goal of effective and efficient reliability administration.

(ii) Bulk-Power System

24. NYSRC argues that section 215 does not provide a "bright-line" test for Bulk-Power System facilities and states that the statutory intent of section 215 limits the Commission's jurisdiction to facilities that are necessary for the reliable operation of the Bulk-Power System.[31] Several commenters state that the Commission's proposal exceeds its statutory authority as described in the definition of "Bulk-Power System" because the proposed definition of bulk electric system would likely encompass facilities not necessary for operating the interconnected network,[32] and that the statutory definitions of "Reliability Standard" and "Reliable Operation" refer to protecting the system from instability, uncontrolled separation, or cascading failures, not local-area outages.[33] The commenters contend that a functional test, such as NPCC's current material impact assessment would be more appropriate since it is tailored to include facilities that are necessary for operation of an interconnected electric energy transmission network.

25. GTC/GSOC add that the proposed change would make the definition of "bulk electric system" broader than the statutory definition of "Bulk-Power System," and therefore would exceed the Commission's authority.

(iii) Distribution Facilities

26. Several other parties assert that the proposed rule will inappropriately include distribution facilities as part of the bulk electric system, and argue that the Commission's proposal is contrary to Congress's definition of "Bulk-Power System" and the Commission's own precedent regarding transmission versus local distribution.[34] Several parties state that FPA section 215 specifically excludes distribution facilities and that they therefore should be excluded from the definition of "bulk electric system." Constellation/CENG argues that the Commission's proposal to exclude from the definition of "bulk electric system" "[r]adial transmission facilities serving only load with one transmission source" is too limiting. Constellation/CENG believes that this approach will include local distribution facilities in a manner contrary to section 215 of the FPA.

27. The NYPSC contends that the Commission's proposal exceeds its jurisdiction by encompassing local distribution facilities that are not necessary for operating the interconnected transmission network. It states that 138 kV facilities in New York City operate above 100 kV but do not serve a bulk system function due to the high concentration of load served by these lines. It asserts that transmission facilities such as these that move power between Bulk-Power System and distribution facilities do not affect the reliable operation of the bulk system. The New York Transmission Owners contend that the Long Island Power Authority's (LIPA) system east of the Northport system is composed of 138 kV lines with limited connections to other areas that is not affected by other regional flows, but instead mirrors a radial system feeding local load.

28. Snohomish, Consumers Energy, PGE, Tacoma Power and other commenters argue that the Commission's proposal, unless clarified to exclude distribution facilities, is contrary to statute because section 215 directs that distribution facilities should be excluded on a functional basis regardless of voltage.[35] Snohomish argues that the Commission's proposal departs from its previous determinations in Order No. 693 regarding the difference between transmission and distribution systems.[36] Further, it states that section 215 emphasizes how facilities are used rather than their voltage level, and asserts that the NOPR's definition runs counter to the statutory definition.

(2) Commission Determination

(i) Overview

29. We disagree that the Commission exceeded its statutory authority by directing the ERO to revise the definition of bulk electric system in its Glossary of Terms. We agree with NERC that the NERC Glossary is part of the Reliability Standards and therefore falls under the same section 215 process. Pursuant to section 215(d)(5), the Commission may order the ERO to submit a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter. Here, by directing a revision to the definition of bulk electric system, the Commission orders a modification to a definition of a term contained in a

[29] NERC at 8–11.

[30] TAPS at 4; *see also* Snohomish at 22–28.

[31] NYSRC at 7–8.

[32] *See, e.g.,* NYPSC, NYSRC, Duke Energy, Indicated New York Transmission Owners, Snohomish and Joint Western Commenters.

[33] NYSRC at 7.

[34] *See, e.g.,* Constellation/CENG, Dow, Duke Energy, GTC/GSOC, Hydro-Québec, Indicated New York Transmission Owners, Joint Western Commenters, NARUC, NV Energy, NYSRC, PGE, Public Power Council, Snohomish Tacoma Power, TIEC.

[35] *See, e.g.,* Snohomish at 20–22; PGE at 3–6; Tacoma Power at 2–3.

[36] Snohomish at 20–21 (citing Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 23 n.20).

number of Commission-approved Reliability Standards.[37] Because this term is contained within Commission-approved Reliability Standards, the Commission has the authority to direct the ERO to develop a modification of the definition of a defined term contained in the Reliability Standards under the process delineated in section 215 of the FPA.

30. For the reasons discussed more fully below, the Commission finds that the current definition of bulk electric system is insufficient to ensure that all facilities necessary for operating an interconnected electric energy transmission network are included under the "bulk electric system" rubric. Therefore, pursuant to section 215(d)(5) of the FPA,[38] the Commission directs the ERO to modify, through the Standards Development Process, the definition of "bulk electric system" to address the Commission's technical and policy concerns described more fully herein. The Commission believes the best way to address these concerns is to eliminate the regional discretion in the ERO's current definition, maintain the bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities the ERO determines are not necessary for operating the interconnected transmission network. It is important to note that the Commission is not proposing to change the threshold value already contained in the definition, but rather seeks to eliminate the ambiguity created by the current characterization of that threshold as a general guideline.[39]

31. In accordance with Order No. 693, the ERO may develop an alternative proposal for addressing the Commission's concerns with the present definition with the understanding that any such alternative must be as effective as, or more effective than, the Commission's proposed approach in addressing the identified technical and other concerns,[40] and may not result in a reduction in reliability.[41] If the ERO decides to propose an alternative approach, it must explain in detail, and with a technical record sufficient enough for the Commission to make an informed decision, how its alternative addresses each of the Commission's concerns in a manner that is as effective as, or more effective than, the Commission's identified solution.[42] Additionally, the ERO would need to address the factors the Commission will consider in determining whether a proposed Reliability Standard is just and reasonable, as outlined in Order No. 672. In particular, Order No. 672 states that proposed Reliability Standards "should be clear and unambiguous regarding what is required and who is required to comply."[43] Another factor indicates that a "proposed Reliability Standard should be designed to apply throughout the interconnected North American Bulk-Power System, to the maximum extent this is achievable with a single Reliability Standard."[44] As Order No. 672 further requires, any proposed regional difference must be: (1) More stringent than the continent-wide definition, including a regional difference that addresses matters that the continent-wide definition does not; or (2) necessitated by a physical difference in the Bulk-Power System.[45]

32. The Commission further finds that revising the definition to address the identified concerns is a significant step toward improving the reliability of the Bulk-Power System in North America because it protects the reliability of the bulk electric system and provides clarity and consistency across the nation's reliability regions in identifying bulk electric system facilities.

33. The Commission directs the ERO to submit these modifications no later than one year from the effective date of this Final Rule. We will address each proposal and the specific comments received on each proposal in the remainder of this Final Rule.

(ii) NERC Standards Development Process and Deference to NERC and the Regional Entities

34. With regard to the concerns raised by some commenters about the prescriptive nature of the Commission's proposed modifications, we agree that, consistent with Order No. 693, a direction for modification should not be so overly prescriptive as to preclude the consideration of viable alternatives that may produce an equally effective or efficient solution. However, some guidance is necessary, as the Commission explained in Order No. 693:

> [I]n identifying a specific matter to be addressed in a modification * * * it is important that the Commission provide sufficient guidance so that the ERO has an understanding of the Commission's concerns and an appropriate, but not necessarily exclusive, outcome to address those concerns. Without such direction and guidance, a Commission proposal to modify a Reliability Standard might be so vague that the ERO would not know how to adequately respond.[46]

35. Thus, due to the importance of the bulk electric system definition to our overall ability to carry out the mandates of section 215, and the problems we have identified with the current definition, we provide specific details regarding the Commission's expectations. We intend by doing so to provide useful direction to assist in the Reliability Standards Development Process, not to impede it. As we explained in Order No. 693, we find that this is consistent with statutory language that authorizes the Commission to direct the ERO to submit a modification "that addresses a specific matter" if the Commission considers it appropriate to carry out section 215 of the FPA.[47] Although some commenters' contend that we should "defer to regional expertise," we note that the statute specifies that we should "give due weight" to the ERO's technical expertise.[48] The Commission's action here does not conflict with that statutory requirement. In this Final Rule, we have considered commenters' concerns and, although we have identified a proposed approach, the Commission provides flexibility by directing the ERO to address the underlying issue through the Reliability Standards Development Process.[49] Consequently, consistent with Order No. 693, we clarify that where the Final

[37] *See, e.g.,* CIP–002–2, COM–001–1.1, EOP–004–1, EOP–005–1, FAC–008–1, FAC–009–1, FAC–010–2, FAC–011–2, FAC–013–1, FAC–014–2, IRO–001–1.1, IRO–002–1, IRO–003–2, IRO–004–1, IRO–005–2, IRO–006–4.1, NUC–001–2, PER–001–0.1, PER–002–0, PER–003–0, PRC–004–1, PRC–005–1, PRC–021–1, PRC–022–1, PRC–023–1, TOP–001–1, TOP–002–2, TOP–008–1, TPL–002–0, TPL–003–0, TPL–004–0.

[38] 16 U.S.C. 824o(d)(5).

[39] We note that all regions except NPCC currently utilize 100 kV as a general threshold.

[40] Order No. 693, FERC Stats. & Regs. 31,242 at P 31.

[41] *See, e.g., Version One Regional Reliability Standard for Resource and Demand Balancing,* 133 FERC ¶ 61,063, at P 14 (2010); *North American Electric Reliability Corporation Reliability Standards Development and NERC and Regional Entity Enforcement,* 132 FERC ¶ 61,217, at P 112 (2010).

[42] Order No. 693 FERC Stats. & Regs. 31,242 at P 31.

[43] *See* Order No. 672, FERC Stats. & Regs. 31,204 at P 325.

[44] *See id.* P 331.

[45] *Id.* P 291.

[46] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 185.

[47] *Id.* P 186 (citing 16 U.S.C. 824o(d)(5)).

[48] 16 U.S.C. 824o(d)(2); *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 345 ("We do not agree that giving due weight means a rebuttable presumption that the Reliability Standard meets the statutory requirement of being just, reasonable, not unduly discriminatory or preferential, and in the public interest.").

[49] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 186.

Rule identifies a concern and offers a specific approach to address that concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will adequately address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal.[50]

(iii) Bulk-Power System

36. With regard to the alleged conflict between "bulk electric system" and "Bulk-Power System," the Commission noted in Order No. 693 that Congress chose to create a new term, "Bulk-Power System," with a definition that is distinct from the term of art ("bulk electric system") used by industry, and thus there is an intentional distinction between the Bulk-Power System and the bulk electric system.[51] The Commission further noted that the statutory term "Bulk-Power System" has not been definitively defined but does not establish a voltage threshold limit of applicability or configuration as does the NERC definition of "bulk electric system," and therefore may reach more facilities than NERC's definition of "bulk electric system."[52]

(iv) Distribution Facilities

37. The Commission has stated that the statutory term "Bulk-Power System" defines the jurisdiction of the Commission.[53] The Commission noted that it has not defined the extent of the facilities covered by the Bulk-Power System, but that Congress specifically exempted "facilities used in the local distribution of electric energy" from the definition. FPA section 215 defines the term "Bulk-Power System" as encompassing the "facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof)."[54] In ascertaining the extent of the facilities included in the "Bulk-Power System" definition, the Commission's prior discussion regarding the inclusion of generation facilities as part of the Bulk-Power System is instructive. In the discussion, the Commission stated that, "if electric energy from a generating facility is needed to maintain a reliable transmission system, that facility is part of the Bulk-Power System with respect to the energy it generates that is needed to maintain reliability."[55] Similarly, several 115 and 138 kV facilities that some entities term as "distribution" may be needed to reliably operate the interconnected transmission system. Determining where the line between "transmission" and "local distribution" lies, which includes an inquiry into which lower voltage "transmission" facilities are necessary to operate the interconnected transmission system, should be part of the exemption process the ERO develops.

38. The Commission disagrees with comments that appear to assert that the Commission's jurisdiction extends only to facilities that could, if improperly operated, singularly cause cascading outages, uncontrolled separation or instability. By this narrow metric, the facilities that caused the 2003 Blackout would not be viewed as critical since not one of the individual facilities caused the outage. In defining jurisdictional facilities, section 215(a)(1) focuses on whether facilities are necessary to operate the interconnected transmission system, not solely on the consequences of unreliable operation of those facilities. Lower voltage facilities needed to reliably operate the grid tend to operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources and may operate as part of a defined flow gate. These parallel facilities operated at 100–200 kV will experience similar loading as higher voltage facilities at any given time. Additionally, the lower voltage facilities will be relied upon during contingency scenarios.

39. For example, we are not persuaded by the NYPSC's argument that the 138 kV system in New York, and specifically the 138 kV system including those facilities in the Astoria area, are all distribution facilities. We do not believe that most of these facilities are local distribution because: the facilities are not primarily radial in character, as they are connected to the 345 kV network in the Astoria area at over six different points; the 138 kV system is networked amongst itself; power flows both in and out of the system into both NYISO and PJM facilities depending on time of day and loading; and the system is not constrained to a comparatively restricted geographical area due to multiple interconnections. The 138 kV system in the Astoria area includes six major substations that are interconnected at 345 kV to both NYISO and PJM facilities that are integral parts of the Eastern Interconnection. There are ten 138 kV phase angle regulators connecting the 345 kV stations to the 138 kV network, which are necessary to control the appropriate distribution of power flows between the 345 kV and 138 kV systems to accommodate power transfers from upstate New York and PJM into southeastern New York. In addition, there are approximately 9,000 MW of capacity resources directly connected to the 138 kV network in the New York City area at different points, 2,000 MW of which is connected in the Astoria area. Similarly over 10,000 MW of customer firm demand in the area is supplied from the 138 kV to lower voltage levels via step-down transformers. None of these characteristics is consistent with any reasonable definition of local distribution.[56] To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system.

40. Nor are we persuaded by the Indicated New York Transmission Owners' statement that LIPA's service territory—which includes a majority of Long Island, identified as Zone K by NYISO and, as reported in the NYISO "Load & Capacity Data," had a 2010 summer peak load of 5,300 MW—"mirrors a radial system feeding local load." As with the 138 kV network in New York City discussed above, the LIPA system contains significant capacity resources (5,700 MW), is interconnected with other portions of NYISO, ISO–NE, and PJM, and its operations affect and depend on operations in other portions of New York, as well as New Jersey and Connecticut.[57]

41. Some commenters allege that the proposal is an unexpected departure from the Commission's previous actions regarding the bulk electric system in Order No. 693. To the contrary, the Commission was very clear about its reservations in accepting the NERC bulk electric system definition in Order No. 693 and expressly accepted the definition for an "initial period"[58] subject to subsequent review.[59] The

[50] *Id.*

[51] *Id.* P 76.

[52] *See id.* P 76; Order No. 693–A, 120 FERC ¶ 61,053 at P 17–18.

[53] Order No. 693–A, 120 FERC ¶ 61,053 at P 19.

[54] 16 U.S.C. 824o(a)(1).

[55] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 71.

[56] This example illustrates one of the deficiencies of the NPCC impact-based approach for identifying bulk electric system facilities, discussed more fully below.

[57] *See http://www.nyiso.com/public/webdocs/services/planning/reliability_assessments/AppxE.pdf* and *http://www.nyiso.com/public/webdocs/services/planning/planning_data_reference_documents/2010_GoldBook_Public_Final_033110.pdf.*

[58] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 75.

[59] In accepting NERC's definition of "bulk electric system," the Commission explained: "Although we are accepting the NERC definition of bulk electric system and NERC's registration process for now, the

Commission's action here will ensure that all facilities necessary to maintain a reliable transmission system are included as part of the bulk electric system and thus will be subject to ERO and Commission oversight.[60]

(b) Scope of the Definitional Change of "Bulk Electric System"

(1) NOPR Proposal

42. In the NOPR, the Commission proposed to direct the ERO to revise its definition of the term "bulk electric system" to include all electric transmission facilities with a rating of 100 kV or above.[61] The Commission's proposal further states that a Regional Entity must seek ERO and Commission approval before exempting any facility rated at 100 kV or above from compliance with mandatory Reliability Standards.

(2) Comments

43. NERC argues that the proposed definitional change would have a much broader impact than acknowledged by the Commission. Among other things, NERC states that the proposed change to "rated at" from the current "operated at" will dramatically expand the scope of facilities and entities affected by the change. NERC states that the proposal will unnecessarily include some facilities that entities built at higher voltage levels (i.e., 138 kV) to accommodate future load growth while presently operating the facilities at lower voltages (i.e., 69 kV).

44. Several commenters seek clarification that the definition of "bulk electric system" is not intended to supersede voltage thresholds specified in specific Reliability Standards.[62] For example, Reliability Standard FAC–003 generally applies to transmission lines 200 kV and above.

45. Joint Western Commenters and Bay Area Municipal argue that the definition of "bulk electric system" that the Commission ultimately accepts should clarify that if an element is determined to be part of the bulk electric system, such an element is not necessarily a transmission asset.

46. Joint Western Commenters state that an entity should be able to de-register as a Distribution Provider and Load-Serving Entity if it does not own any bulk electric system elements.[63] They state that an entity with no elements in the bulk electric system cannot be considered an owner or operator of the bulk electric system, and because operation of that entity's distribution assets has no material impact on the bulk electric system, it should be exempt from regulation as transmission and the need to register and participate in the regulatory framework for transmission facilities. These commenters also state that requiring an entity with no bulk electric system elements to comply with the mandatory Reliability Standards would be an unnecessary burden on the entity, and a diversion of resources by the Regional Entity, NERC, and the Commission.[64]

47. Although EEI supports the Commission's proposal not to change the ERO treatment of radials under the ERO definition of bulk electric system, several commenters raise concerns about the scope of the exemption going forward.

48. Several commenters believe that the statement in the NOPR that radial lines would not be part of the bulk electric system is not enough to remove ambiguity.[65] APPA/NRECA notes that the NOPR leaves a question open as to whether radial lines would be automatically exempt under the bulk electric system definition or whether entities would have to go through the multi-tiered exemption process.[66] Other commenters point out that certain Regional Entities currently provide a clearer and more valid approach to determining whether facilities should be classified as exempt radial facilities. They state for example that the WECC process includes additional detail regarding demarcation points and system characteristics that are important in defining "radial." Commenters also state that the WECC transmission system includes radial lines, where a backup feed is possible, but is normally open, and a utility should not be penalized for having a secondary feed via a normally open line by requiring it to automatically become part of the bulk electric system. The bright line 100 kV threshold would encourage small utilities to choose not to provide backup service options, reducing overall customer service.

49. Arguing that NERC's current definition of radial transmission facilities, defined as "facilities serving only load with one transmission source," is too narrow, National Grid supports adoption of a broader definition that includes tap lines and associated facilities used to serve local load only, and transmission lines that are operated in an open position for normal operations.[67]

50. ELCON states that the Final Rule should specify that radial lines do not have to go through the exemption process.

51. FRCC states the Commission should afford the Regional Entities sufficient time to complete their efforts to define the scope of the bulk electric system, since they are in the process of establishing criteria for the exclusion of facilities as "radial transmission facilities."

(3) Commission Determination

52. We grant the clarification sought by commenters that the 100 kV threshold will not modify thresholds established in individual Reliability Standards such as FAC–003.

53. In response to comments, although the NOPR used the term "rated at," the Commission did not intend to require NERC to utilize that term rather than the term "operated at" which is reflected in the current definition of bulk electric system. While the Commission does not have firm data on the number of facilities that operate at a voltage significantly lower than the rated voltage, we find that the term "rated at" could generate confusion.[68]

54. We believe that the issues of whether a distribution provider or load-serving entity may de-register if it is shown not to own any bulk electric system elements, and whether the inclusion of a facility as part of the bulk electric system is or is not determinative of that facility's status as a transmission asset, are addressed by the NERC Registry Criteria and beyond the scope of this proceeding.

Commission remains concerned about the need to address the potential for gaps in coverage of facilities. For example, some current regional definitions of bulk electric system exclude facilities below 230 kV and transmission lines that serve major load centers such as Washington, DC and New York City. The Commission intends to address this matter in a future proceeding."

Id. P 77 (footnotes omitted).

[60] While the Commission seeks to ensure that the definition of "bulk electric system" includes all facilities 100 kV or above that are necessary for reliable operation, our action here is not intended to determine the extent of the facilities included in the Bulk-Power System. As stated in Order No. 693–A, the Commission believes that the Bulk-Power System reaches farther than those facilities that are included in NERC's definition of the bulk electric system, but we have not definitively defined the extent of the facilities covered by the Bulk-Power System, and we are not doing so here. *See* Order No. 693–A at P 17–18.

[61] NOPR, FERC Stats. & Regs. ¶ 32,654 at P 1.

[62] *See, e.g.,* EEI, Dominion Power, National Grid, and Southern Company.

[63] Joint Western Commenters at section IV.B.

[64] *Id.*

[65] *See, e.g., id.* at section III.C.

[66] APPA/NRECA at 19–23.

[67] National Grid at 10.

[68] Operating voltage usually encompasses a small range of voltages around the expected or normal operating value while rated voltage depends on the design of the facilities.

55. As we stated in the NOPR, we do not seek to modify the second part of the definition through this Final Rule, which states that "[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition." While commenters would like to expand the scope of the term "radial" to exclude certain transmission facilities such as tap lines and secondary feeds via a normally open line, we are not persuaded that such categorical exemption is warranted. For example, when the normally "open" line is "closed," it becomes part of the transmission network and therefore should be subject to mandatory Reliability Standards. Commenters also argued that the bright line 100 kV threshold would encourage small utilities to choose not to provide backup service options, reducing overall customer service. We acknowledge these concerns, and direct the ERO to consider these comments regarding radial facilities in crafting an exemption methodology.

(c) Technical and Historical Justification for Modification

(1) NOPR Proposal

56. In the NOPR, the Commission stated its concern that if it does not clarify the "bulk electric system" definition to apply a stricter 100 kV threshold, it would not be fulfilling Congress's intent in enacting section 215. The NOPR stated that the Commission believes there is an adequate technical and reliability-related justification, discussed further below, for the proposed 100 kV operating threshold for identifying bulk electric system facilities. Additionally, the NOPR noted that NERC already applies a general 100 kV threshold.[69] Further, at present all regions, with the exception of NPCC, also apply a 100 kV threshold.

57. The NOPR identified inconsistencies between regions, such as two transmission lines that are classified as bulk electric system in ReliabilityFirst but not in NPCC.[70] The NOPR also offered examples of disturbances that either began on or were propagated by 100–200 kV facilities, including a February 26, 2008 event in FRCC originating at a 138 kV facility that resulted in the loss of 24 transmission lines and 4,300 MW of generation, and a June 27, 2007 event on 138 kV transmission lines in the NPCC region that included sequential tripping of four 138 kV cable-circuits without a contingency. The June 27, 2007 NPCC event (the "Astoria West event") resulted in the interruption of service to about 137,000 customers as well as the loss of five generators and six 138 kV transmission lines. Further, the NOPR pointed to Transmission Loading Relief (TLR) issuances on non-bulk electric system elements in New York and the historical basis for a 100 kV threshold as justification.

(2) Comments

58. Several commenters including ISO–NE, BGE, Northeast Utilities, ReliabilityFirst, Manitoba Hydro, and Dominion Power support the proposed change, arguing that the increased consistency and applicability of NERC Reliability Standards will ensure reliability. Moreover, a number of other commenters who ultimately suggest that other processes are more appropriate for undertaking a modification to the definition of "bulk electric system" agree with the overriding goal to develop a more consistent definition of "bulk electric system." For example, NERC notes that it "supports the Commission's objectives of ensuring a common understanding and consistent application of the definition of 'bulk electric system' across the regions," with variations justified on the basis of reliability.[71] Likewise, ReliabilityFirst supports the creation of a bright-line rule for determining which facilities are subject to Reliability Standards (with appropriate process for refinement or exemption), and both SCE and WECC generally support a rebuttable presumption that transmission facilities above 100 kV should be initially classified as "bulk electric system" facilities, as long as appropriate mechanisms for exclusion are in place.[72]

59. Several other commenters contend that the proposal does not explain how the proposed changes to bulk electric system classification would have prevented the discussed events or improved reliability.[73] They argue that the NOPR did not describe whether these events took place on facilities classified as "bulk electric system" or non-"bulk electric system." Similarly, commenters contend that the NOPR does not show the connection between regional inconsistencies and reliability concerns.[74] Commenters also assert the proposal will be expensive and lengthy to implement without improving reliability.

60. Additionally, several commenters state that a material impact assessment should be used instead of a "bright-line" test, thus deferring to the Regional Entities' technical expertise.[75] Commenters also contend that the Commission has not shown how the current NPCC method is flawed or how it has harmed reliability. They conclude that a material impact assessment is preferable to a "bright-line" test because they believe it will focus limited resources towards critical facilities that have the largest impact.

61. APPA/NRECA, NARUC, CMUA, CPUC, and TANC state that the specific examples cited by the Commission of outages on lower voltage lines in one region do not support making sweeping changes to the definition of bulk electric system as proposed in the NOPR. APPA/NRECA notes that the Commission's stated concerns about facilities inappropriately excluded from the bulk electric system definition are limited to the NPCC region, while the Commission's proposed solution is directed at and would affect all regions.[76] APPA/NRECA asserts that the Commission's limited examples of outages on lines excluded from the bulk electric system definition in NPCC cannot support imposing the Reliability Standards on all lower-voltage facilities, regardless of the function and impact of such facilities.[77] Finally, APPA/NRECA notes that the Commission's attempt to justify the proposal based on the total amount of 100 kV facilities in service is inapposite, as it has no bearing on whether or not those facilities function as part of the bulk electric system.[78] Similarly, CMUA asserts that it is inappropriate to draw conclusions regarding the effect of disturbances on lower-voltage facilities based on a limited number of cases in one region, without consideration of the nature of the facilities and particular features of that region.[79] NARUC also contends that a key part of the historical approach to the "bulk electric system" definition was the Regional Entities' ability to define the bulk electric system for its own region. Further, NARUC states that the NOPR does not identify any excluded lines critical to reliability. Additionally,

[69] NOPR, FERC Stats. & Regs. ¶ 32,654 at P 13–14.

[70] *See* NERC/NPCC, compliance filing, Docket No. RC09–3 (filed Feb. 20, 2009).

[71] NERC at 2.

[72] ReliabilityFirst at 2; SCE at 2; WECC at 3.

[73] *See, e.g.,* FRCC, NARUC, NYSRC, Redding, GTC/GSOC.

[74] *See, e.g.,* NARUC, NYPSC, FRCC, Dow, GTC/GSOC, Hydro-Québec, Ontario Power, NV Energy, Snohomish, Southern.

[75] *See, e.g.,* NARUC, NYSRC.

[76] APPA/NRECA at 15–16.

[77] *Id.* at 30–31.

[78] *Id.* at 32.

[79] CMUA at 5.

NARUC believes NPCC's estimated $280 million cost to comply with the new ruling will outweigh the expected minimal to negligible benefit.

62. The Joint Canadian Parties assert that the impact-based methodology ensures that all facilities critical to wide-area reliability, independent of voltage level, are covered by the bulk electric system definition. Similarly, they argue that the NERC Reliability Standards should apply only to facilities that, if lost, would have the potential for a wide-area reliability impact.

63. The Indicated New York Transmission Owners and NYSRC state that the NOPR does not sufficiently account for the time and cost required to implement the proposed rule change. Further, they contend that the TLR events cited in the NOPR were issued in order to mitigate an unanticipated clockwise flow around Lake Erie, and that classification of lower voltage facilities as part of the "bulk electric system" would not have affected the need for the TLR. The NYPSC and Duke Energy contend that the 115 kV facility in the Central East ties flowgate constitutes a minor element of the flowgate that would not result in a cascading event on the bulk system.

64. NYSRC also contends that the February 26, 2008 and the June 13, 2008 events cited in the NOPR occurred in regions that already use a 100 kV threshold and therefore do not show that the 100 kV threshold is more effective at protecting reliability than the impact-based approach. Additionally, NYSRC believes that the current methodology appropriately defers to regional expertise.

65. NYPSC also states that the June 27, 2007 event "was caused by lighting [sic] strikes on the telecommunications system over which several relay signals were carried," and that the utility involved has since ensured separate paths are provided for telecommunications beyond the fence of the electric utility's facilities.[80] Additionally, the NPCC Working Group concluded that the event was confined to the Astoria West load pocket and that no other portions of the Consolidated Edison (ConEd) system were affected. Separately, the NYPSC states that the Commission has not provided evidence as to how the regional inconsistencies identified in the NOPR jeopardize reliability.

66. Alcoa states that it supports NPCC's current material impact assessment because it believes most of the facilities not included in the bulk electric system are accurately excluded. Alcoa further contends that the Commission has not shown how inclusion of lines like these will improve reliability and that the reliability benefit is only presumed. Dow likewise argues that it does not believe that the applicability of NERC Reliability Standards is a sufficient basis to assume that reliability will improve and argues that the NOPR does not provide any additional evidence.

67. Constellation/CNEG supports continued use of Regional Reliability Organizations' technical discretion as opposed to the Commission's proposal. Constellation/CNEG states that current proposals from WECC utilizing a Short Circuit Megavolt Ampere methodology, or a three-phase fault with delayed clearing analysis, demonstrate the proper regional discretion and technical expertise. Similarly, Tacoma Power requests that the WECC Bulk Electric System Definition Task Force (BESDTF) be allowed to complete its work, and states that the Commission has not provided sufficient technical support for requiring a bright-line voltage-based standard.[81] The Joint Western Commenters state that the Final Rule should be consistent with the WECC BESDTF's efforts that will utilize an impact based approach. Further, if the Commission has issues with the NPCC method, Constellation/CNEG state that the Commission should address its concerns with NPCC specifically rather than through an across the board proposal. The Joint Western Commenters similarly state that the Western entities should not be penalized for NPCC's actions, which actions are the apparent impetus for issuance of the NOPR.

68. Hydro-Québec and Ontario Power state that application of the NERC Reliability Standards should be limited to facilities with a material impact on reliability, based on regional variances and expertise. The proposed change would divert needed resources from more important facilities.

69. NESCOE requests the Commission study the impact of the proposal more before implementing the rule.

70. Bay Area Municipal agrees that 115 kV and 138 kV facilities have either caused or contributed to significant bulk system disturbances and cascading outages. Utah Municipal also concedes that some facilities rated at 100 kV and above may have been improperly excluded from classification in the bulk electric system, at least in the NPCC. However, Utah Municipal also states that unless the facilities described were not included in the bulk electric system of the applicable Regional Entities, the cited events do not show a flaw in the existing definition.[82] Utah Municipal also disputes the NOPR's claim of a historical precedent supporting the 100 kV threshold since the previous threshold was presumptive rather than a "bright-line." Utah Municipal recommends that the Commission allow WECC's BESDTF to complete its work on a hybrid definition that utilizes a presumptive 100 kV threshold and a material impact assessment. Utah Municipal suggests that this model be used as a template for other Regional Entities' bulk electric system definitions.

71. The WPSC and Consumers Energy state that without substantial refinement, the proposal will cause public utilities to experience significant but unnecessary compliance costs. Additionally, the WPSC anticipates that utilities would elect to build facilities below the 100 kV threshold to avoid "bright-line" oversight, which will in turn result in a lower voltage, less technically capable system and will therefore adversely affect reliability.[83]

(3) Commission Determination

72. The Commission finds sufficient justification for the action in this Final Rule. The current definition has failed to ensure that all facilities necessary for operation of the interconnected transmission network are covered by the Reliability Standards. As discussed above, the current definition allows broad regional discretion without ERO or Commission oversight, which has resulted in reliability issues such as the exclusion of transmission serving bulk electric generators (including nuclear plants), inconsistency in classification at the seams that compromises the effectiveness of the Reliability Standards, routine TLR events on non-bulk electric system facilities, and the exclusion of elements necessary to operate the interconnected transmission network. Given the inconsistency of the application among regions and the reliability issues created as a result of the current definition, we conclude that it is necessary to direct the ERO to revise the definition of "bulk electric system" to ensure that all facilities necessary to operate the interconnected transmission network are included and to address the concerns noted herein. We believe that the Commission's proposed approach of adopting a bright-line, 100 kV threshold, along with a NERC-developed, Commission-approved exemption process, as well as

[80] NYSPC at 10.

[81] Tacoma Power at 6.

[82] Utah Municipal at 8.

[83] WPSC at 2–3.

eliminating regional variations unless approved by the Commission as provided in Order No. 672,[84] is an appropriate action to ensure bulk electric system reliability.

73. As discussed in this Final Rule, many facilities operated at 100 kV and above have a significant effect on the overall functioning of the grid. The majority of 100 kV and above facilities in the United States operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources and operate as part of a defined flow gate, which illustrates their parallel nature and therefore their necessity to the reliable operation of the interconnected transmission system. Parallel facilities operated at 100–200 kV will experience similar loading as higher voltage parallel facilities at any given time and the lower voltage facilities will be relied upon during contingency scenarios. Further, as illustrated by the Commission's examples and as Bay Area Municipal states, 115 kV and 138 kV facilities have either caused or contributed to significant bulk system disturbances and cascading outages. Additionally, the current definition's broad regional discretion has allowed classification inconsistencies to develop within and along the borders of Regional Entities, as discussed in further detail herein.[85] The proposed 100kV threshold is intended to ensure facilities necessary for reliable operation are captured by the definition and to avoid entities exempting their facilities by any means other than through a Commission-approved exemption process.

74. While the Commission believes the solution described above is the best way to address the identified problems with the current definition, the ERO has the discretion to develop an alternate solution that is as effective as, or superior to, the Commission's proposed approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability. If the ERO chooses to propose a different solution, it must demonstrate that its proposal is equally effective or more effective at ensuring that all facilities necessary to operate the interconnected transmission network are captured by the definition and that the proposal will not produce the inconsistencies and inaccuracies that result from the current definition, as described in this Final Rule. The ERO must support any alternate proposal with a technical analysis that demonstrates and explains, with a technical record sufficient for the Commission to make an informed decision, how its proposal provides the same level of reliability as the Commission's proposal, and reflects the reality of how entities use and rely on their 100 kV and above facilities.

75. Finally, we believe use of the term "operated at" rather than "rated at" together with the exemption methodology that NERC will develop as discussed in this Final Rule addresses the WPSC's concern that utilities may elect to build facilities below 100 kV to avoid oversight.

(i) Impact-Based Methodology and Regional Variation

76. Several commenters argue that the Commission did not adequately justify the proposed changes to the "bulk electric system" definition and that the technical examples provided similarly do not justify the proposed changes. In their opinion, an impact-based methodology is superior to the proposed approach. The Commission does not support using the material impact tests proffered by commenters as a basis for determining a facility's importance. Section 215 states that the Reliability Standards apply to facilities that are necessary for operating an interconnected electric energy transmission network (or any portion thereof). The material impact tests that either are under development or implemented appear to exclude facilities without regard to whether they are necessary to operate the system, and instead seek to determine the impact of the loss of an element. The Commission is not aware of any consistent and comprehensive material impact test that the industry has implemented to date. The scale and magnitude of generation and load loss during the Astoria West event described herein further demonstrates the shortcomings of NPCC's material impact assessment in determining bulk electric system elements necessary to ensure reliable operation. We disagree with assertions that the Astoria West event was an invalid example, as the commenters did not provide sufficient evidence supporting their assertions.

77. We disagree with commenters who assert that NPCC's current material impact assessment, referred to as NPCC Document A–10, ensures that the proper facilities are included in the bulk electric system. Although the NPCC Document A–10 provides a test methodology to identify elements of the bulk electric system, the tests prescribed are subjective. In the test, a specific bus is subjected to a three-phase fault and the impacts on other buses are determined.[86] NPCC Document A–10 states that "a transient stability test may be done first to identify buses at which faults may cause a significant adverse impact outside of the 'local area.' "[87] The term "local area" is broadly defined and is open to interpretation.[88] Thus, under NPCC Document A–10, if an entity chooses a large geographical area for its "local area," the impact resulting from a fault at a specific bus could be considered a "significant adverse impact," but since the impact falls within the large "local area," the bus may not be declared part of the bulk electric system. For example, if one entity defines the "local area" as the boundary of the balancing authority, while another entity defines the local area as adjacent buses, the outcome of the two tests could vary significantly. In particular, this likely could result in an exclusion of a large number of facilities from the purview of the bulk electric system for the first entity that applies a broader view of "local area."

78. NPCC Document A–10 does not assess whether the facilities within the "local area" are necessary for reliable operation of the interconnected transmission network and also does not discuss system performance or any "significant adverse impact" on the facilities within the "local area." Therefore, facilities within a local area could operate in an unstable manner or violate emergency operating limits, and as long as these adverse effects are

[84] *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 291.

[85] *See* NERC Petition, Docket No. RM08–013–000, at 18 (filed July 30, 2008). There NERC indicated that the PRC–023 standard drafting team selected a voltage threshold for the Reliability Standard's applicability because the bulk electric system definition has too many variances to be effective for defining a Reliability Standard's applicability: "This conclusion [to use a voltage-specific-threshold] was reached by considering the potential variances in the facilities included as the bulk power system in different Regional Entities, together with an observation that the effects of the proposed reliability standard are not constrained to Regional boundaries. For example, if one Region has a purely performance-based criteria and an adjoining Region has a voltage-based criteria, these criteria may not permit consideration of the effects of protective relay operation in one Region upon the behavior of facilities in the adjoining Region."

[86] NPCC Document A–10 defines the term bus as "a junction with sensing or protection equipment within a substation or switching station at which the terminals of two or more elements are connected, regardless of whether circuit breakers are provided." *See* NPCC Document A–10 at page 2.

[87] *See* NPCC Document A–10 at 4.

[88] *See* NPCC Glossary of Terms, NPCC Document A–7 at 13–14 ("Local area—An electrically confined or radial portion of the system. The geographic size and number of system elements contained will vary based on system characteristics. A local area may be relatively large geographically with relatively few buses in a sparse system, or be relatively small geographically with a relatively large number of buses in a densely networked system.").

contained within the defined "local area," NPCC's Document A–10 assessment would deem those facilities outside the scope of the bulk electric system. For these reasons, we believe NPCC's Document A–10 assessment has resulted in an inconsistent process that excludes facilities from the bulk electric system.

79. NARUC and other commenters contend that the Commission has not demonstrated any reliability issues created by NPCC's current methodology.[89] To the contrary, the NOPR noted that seven high and extra-high voltage lines in NPCC are not included in the bulk electric system under the current definition, including some serving nuclear power plants, and pointed to several events that occurred in other regions on facilities that may not have been included in the bulk electric system if they were under NPCC's current methodology. Additionally, thousands of megawatts of capacity resources are connected to these excluded transmission facilities.

80. Further, there is even inconsistency within NPCC in that a 345 kV tie-line between ISO–NE and NYISO is classified as part of the "bulk electric system" in one ISO but not the other. Regional classification inconsistencies can also lead to issues under TOP–002, Requirement R7.[90] If one Regional Entity or balancing authority within a region complies with TOP–002, Requirement R7 by ensuring system deliverability during a single contingency along its portion of an intra-regional tie-line while the other Regional Entity or the other balancing authority within the same region on the other end of the tie-line does not, during a contingency, deliverability is not ensured, which could lead to loss of load and undermine reliability.

81. Moreover, one of the main justifications for the Final Rule is to reduce inconsistencies across regions in order to increase the effectiveness of the NERC Reliability Standards. Some commenters challenge the supposition that regional inconsistency is a drawback of the current definition. Commenters state that regional variation allows regional entities to use their technical expertise to adopt a tailored regional bulk electric system definition. NARUC and Utah Municipal contend that a key part of the historical approach was the discretion of the Regional Entities.

82. In response, as the Commission stated in Order No. 672, uniform Reliability Standards, and uniform implementation, should be the goal and the practice, the rule rather than the exception, absent a showing that a regional variation is superior or necessary due to regional differences.[91] Consistency is important as it sets a common bar for transmission planning, operation, and maintenance necessary to achieve reliable operation. As noted, we have found several reliability issues with allowing Regional Entities broad discretion without ERO or Commission oversight. The Commission's proposed approach to addressing these concerns will enable affected entities to pursue exemptions for facilities they believe should not be included in the bulk electric system, and also will allow Regional Entities to add facilities below 100 kV they believe should be included.

83. Additionally, Requirement R4 of PRC–001–1 (System Protection Coordination) requires that "[e]ach Transmission Operator shall coordinate protection systems on major transmission lines and interconnections with neighboring Generator Operators, Transmission Operators and Balancing Authorities." If the protection systems on one end of the tie line that are not classified as bulk electric system are not coordinated with protection systems on the other end or with those protection systems on the major transmission lines connected to the same end, the protection system will not operate as desired and cascading outages are likely to occur. This could lead to a significant system event. Deficiencies and lack of coordination in protection systems have been and remain a major cause of power outages since the Reliability Standards became effective in June 2007.[92] These are but a few examples of how uniform application of the Reliability Standards to lines operated at 100 kV or above results in improved reliability. These examples demonstrate that NPCC's current methodology does not necessarily accurately assess situations that warrant exclusion of facilities from the bulk electric system definition.

84. Separately, the NPCC impact-based test has excluded elements that interconnect generators, including multiple nuclear facilities. Nuclear facilities generally are significantly larger than other power plants, serve as base load, and often are critical to meeting capacity demand. They require external interconnections to provide power to auxiliary equipment within the plant under normal and emergency conditions, which includes issues related to black starts and system restoration. Additionally, many non-nuclear generators representing over 10,000 MW of capacity resources that are subject to reliability rules and which provide needed capacity are interconnected to the network through facilities that are not classified as bulk electric system facilities under NPCC's rules, which may undermine the reliability of the capacity provided. The facilities that these generators connect to tend to be 100 kV and above facilities that are operated in parallel with extra high voltage facilities and have numerous interconnections to the extra high voltage network while also serving some distribution facilities.

85. Given the questionable and inconsistent exclusions of facilities from the bulk electric system by the material impact assessment and the variable results of the Transmission Distribution Factor test proposed in NPCC's compliance filing in Docket No. RC09–3, there are no grounds on which to reasonably assume that the results of the material impact assessment are accurate, consistent, and comprehensive.[93]

[89] *See, e.g.,* APPA, NRECA, CMUA, CPUC, and TANC.

[90] TOP–002, Requirement R7 provides that "each Balancing Authority shall plan to meet capacity and energy reserve requirements, including the deliverability/capability for any single Contingency."

[91] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290.

[92] *See, e.g., Mandatory Reliability Standards for the Bulk Power System,* Notice of Proposed Rulemaking, FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,608, at P 280 (2006); *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations* 107 (2004) (Blackout Report), *available at http://www.ferc.gov/industries/electric/indus-act/reliability.asp.*

[93] *See* WECC BESDTF Proposal V5 Appendix B, at B–11–B–12, *available at http://www.wecc.biz/Standards/Development/BES/Shared%20Documents/WECC-058%20BES%20Comments%20Posting%205/P5%20Appendix%20B%20FINAL%20CLEAN.doc:* "The BESDTF considered the Northeast Power Coordinating Council's Transfer Distribution Factor (TDF) approach to determining which networked Elements and facilities are used to distribute electricity locally and do not provide meaningful flow-through capability for the BES. In general, the TDF approach increases generation on one side of a transmission interface, decreases generation on the other side of the transmission interface, and measures the resulting change in flow across the interface. NPCC proposed that an Element with a TDF of less than 1% would not be part of the BES.

WECC staff expressed concern that the results of the TDF studies subjectively depended on which generating units had their output increased and which generating units had their output decreased. The results would also depend on the location, and what kind, of slack bus [a designated generator bus without a real power injection setting used in power system modeling for the purpose of producing or absorbing real power such as change in real losses, loss of generation or interchange] used in the power flow simulation. As a result, the BESDTF did not propose to adopt the TDF method to determine which networked facilities could be

Continued

Additionally, we have noted how the results of multiple material impact tests can vary depending on how the test is implemented. In contrast, the proposed "bright-line" test would continue the 100 kV threshold currently in use throughout much of the industry without allowing entities to vary this definition outside a Commission-approved exemption process. Further, since most regions currently use the 100 kV general threshold, most regions should have little difficulty maintaining a 100 kV bright-line threshold. If NERC proposes an alternate methodology, it must ensure that the method is consistent, repeatable, and verifiable, which the material impact tests we have discussed are not.

86. With respect to the comments about the relevance of the FRCC, ReliabilityFirst and Astoria West events, and statements that they do not provide an adequate basis for our action here, the Commission emphasizes that for the Reliability Standards to have their intended outcome of protecting the system from instability, uncontrolled separation, or cascading failures, the bulk electric system definition must include the facilities necessary for reliable operation of the system and the registered entities must comply with the requirements of the Reliability Standards applicable to those facilities. If the definition excludes facilities that are necessary for reliable operation, the result is that more system events may occur, the impact of such events may be broader, and NERC and the Commission may have little or no authority to require the entities to mitigate the issues going forward. The FRCC, ReliabilityFirst and Astoria West examples demonstrate that, had all the relevant requirements in the Reliability Standards been adhered to, such as those in the PRC, IRO and TOP categories, the impacts of the events could have been minimized, if not avoided all together. The examples also illustrate that, because FRCC and ReliabilityFirst classify the facilities at issue as part of the bulk electric system, NERC and the Commission could require mitigation or take other action to ensure that the entities comply with the Reliability Standards in the future, thus enhancing system reliability. On the other hand, NERC and the Commission were unable to require mitigation with respect to the NPCC event because NPCC's definition excluded the facilities involved from the bulk electric system. We will address our specific concerns with each event in turn, below.

FRCC Event

87. The FRCC event originated from a single fault on a 138 kV facility, which is included in the "bulk electric system" according to FRCC's definition. This single 138 kV fault led to the loss of 22 transmission lines, 4,300 MW of generation, and 3,650 MW of customer service or load distributed over the lower two thirds of Florida. It is clear from the facts that this was a wide-scale cascading outage, which deserves the Commission's attention. Subsequent to this event, Florida Power & Light implemented mitigation plans that would preclude similar problems. The Commission notes that if this same event had occurred in NPCC, the Commission or NERC would not have had the chance to require mitigation of the issue because these facilities would not be considered part of the bulk electric system.

(iii) ReliabilityFirst Event

88. Similarly, the June 13, 2008 event in ReliabilityFirst demonstrates how problems on 100–200 kV facilities can cascade into significant outages. As noted in NOPR, "the inappropriate operation of the relay on a 138 kV facility contributed to the loss of three 138 kV–13 kV transformers, three 138 kV transmission lines, and estimated loss of approximately 150 MW of firm load in a critical high population density area," [94] that includes the White House, for over four hours.[95] Because ReliabilityFirst classifies these facilities as part of the bulk electric system, the circumstances are covered by the Reliability Standards. Thus, ReliabilityFirst, NERC and the Commission are able to require mitigation, which can be informed by the mandatory Reliability Standards. Facilities similar to those involved in this example would not, in NPCC, be included under the bulk electric system definition. Thus those facilities would not have to be operated pursuant to the Reliability Standards and, if a problem occurred, neither the Commission nor NERC could require a mitigation plan to be developed and completed.

(iv) Astoria West Event

89. On the other hand, the ConEd Astoria West facilities are not part of the bulk electric system according to NPCC's impact-based criteria. Nonetheless, as reported by the news media, the event resulted in widespread loss of load affecting around 385,000 people in parts of Manhattan and the Bronx.[96] The NYPSC identified the cause of the outage as a lightning strike not to any ConEd transmission facilities, but a communications facility. The Commission understands that this communication disruption to a protection system by itself did not cause any faults on the 138 kV facilities. However, as explained earlier, this non-fault (N–0) event resulted in the interruption of service to about 137,000 customers, affecting portions of two boroughs in New York City, as well as the loss of five generators and six 138 kV transmission lines. Unlike the FRCC event, ConEd was not required to mitigate, under section 215, the root cause of the Astoria event because the facilities are not included under the bulk electric system definition. We note that these facilities are not included in the definition despite the fact that the 138 kV network is heavily interconnected to the extra-high voltage network through ten 138 kV phase angle regulators in 345 kV stations. Additionally, approximately 2,000 MW of capacity resources and a similarly large quantity of customer firm demand in the Astoria area is directly connected to the 138 kV network or supplied from the 138 kV to lower voltage levels via step-down transformers. While the NYPSC stated that ConEd did mitigate the communication issue at the cited location, it is not clear if ConEd addressed similar vulnerabilities at other locations or if other underlying root cause items were identified or addressed.[97]

(v) Relevance of TLR

90. Reliability Standard IRO–006–4.1—Reliability Coordination—Transmission Loading Relief has the purpose of providing "Interconnection-wide transmission loading relief

classified as Local Distribution Networks and excluded from the BES."

[94] NOPR, FERC Stats. & Regs. ¶ 32,654 at 22.

[95] *See, e.g.,* WTOP story "*Friday the 13th*" *Blackout hits DC* (June 13, 2008), *available at http://www.wtop.com/?sid=1421434&nid=25;* CBS News story "Power Outage Knocks Out D.C." (June 13, 2008) ("'The White house had been running on generator power,' said deputy press secretary Tony Fratto.") *available at http://www.cbsnews.com/stories/2008/06/13/national/main4178695.shtml.*

[96] *See, e.g.,* New York Times article, "Brief Power Failure Is Long Enough to Unsettle" (June 28, 2007), *available at http://query.nytimes.com/gst/fullpage.html?res=9A02E0DB163EF93BA15755C0A9619C8B63&sec=&spon=&&scp=1&sq=Brief%20Power%20Failure%20Is%20Long%20Enough%20to%20Unsettle&st=cse;* ABC News story "Power Back on in NYC after Outages" (June 27, 2007), *available at http://abclocal.go.com/wabc/story?section=weather&id=5428326.*

[97] NYPSC at 10–11. The NYPSC's comments do not specify whether ConEd took any action besides the telecommunications fixes.

procedures that can be used to prevent or manage potential or actual [System Operating Limit] and [Interconnection Reliability Operating Limit] violations to maintain reliability of the Bulk Electric System." The only time that transmission loading relief (TLR) procedures can be used is when a Reliability Coordinator is experiencing a potential or actual System Operating Limit (SOL) [98] or Interconnection Reliability Operating Limit (IROL) [99] on the bulk electric system within its Reliability Coordinator area.[100] The Commission understands that TLR procedures used to curtail firm and non-firm transactions [101] have been activated in NPCC on flowgates that contain facilities that are not part of the bulk electric system under NPCC's definition, but were needed to prevent or manage potential or actual SOL or IROL violations on the NPCC-defined bulk electric system. Since a flowgate generally defines facilities that operate in parallel and collectively respond to a transmission loading relief event as if it were a single transmission facility, it is logical that these 115 and 138 kV parallel facilities are included in these flowgates. Therefore, we disagree with ICNU's and NYSRC's claims that these facilities can be dismissed as unimportant. If a flowgate contains facilities that are needed to prevent or manage SOL or IROL violations, they should be included in the bulk electric system. Since the material impact test did not show this, this is another indication that the test does not adequately identify bulk electric system elements.

(vi) International Concerns

91. Ontario Power contends that the Commission must explicitly state that the proposed change applies only to those jurisdictions within the United States. Ontario Power argues that although the Commission indicates that the proposal seeks to increase consistency across reliability regions by imposing a bright line definition, Ontario Power believes that implementation of the Order as currently proposed will not achieve this goal. Specifically, Ontario Power argues that the proposed modification "will simply move the point of demarcation from one methodology to the other (*i.e.,* 100 kV threshold versus a performance-based approach) from Regional Entity borders to National borders." [102] Ontario Power reiterates that it is not aware of any significant reliability issues attributable to the use of NPCC's performance-based methodology. Accordingly, Ontario Power does not believe that Canadian jurisdictions maintaining the performance-based approach would suffer reduced reliability as compared to those who are required to adopt the 100 kV threshold.

92. Hydro-Québec contends that the NOPR's proposal does not take into account the characteristics of the Québec Interconnection, particularly that it is asynchronous with the other systems that make up the Eastern Interconnection and thus is not freely influenced by power flows in other balancing areas. According to Hydro-Québec, application of the NERC Reliability Standards should be limited to facilities with a material impact on reliability, and this decision is best left to the Regional Entities.

93. The Joint Canadian Parties argue that the NOPR's proposal would result in the Reliability Standards being applied to the majority of facilities 100 kV and above, a significant number of which only impact the local area in the event of a contingency, and often under the purview of different regulatory authorities. Additionally, they state that the proposed "one-size fits all" approach does not give due consideration to either regional variations or the technical expertise of the regions. According to the Joint Canadian Parties, the impact-based methodology ensures that all facilities critical to wide-area reliability are included in the bulk electric system definition.

94. The Commission acknowledges that it does not have jurisdiction to enforce a modified definition with respect to non-U.S. entities. However, as Ontario Power correctly notes, the problems discussed above with respect to transmission lines classified as "bulk electric system" in one region but not classified as such in a connected region also can occur when lines cross the international border. Thus, we will, and we encourage NERC to, work with the Canadian authorities to ensure consistent treatment of transmission lines that cross the border.

95. In response to Ontario Power's statement that it is not aware of any significant reliability issues attributable to use of NPCC's material impact test, and the Joint Canadian Parties' argument that the NOPR proposal would result in Reliability Standards being applied to facilities that only impact the local area, we have discussed elsewhere in this order our concerns with the NPCC methodology including the reliability concerns arising from that test's inconsistent results and our concerns with the subjective nature of the term "local area" as defined in NPCC Document A–10. We also note that the Final Rule directs the ERO to consider adopting an exemption process that would help alleviate the Joint Canadian Parties' concerns about a "one-size fits all" approach. Finally, because this Final Rule directs the ERO to develop a revised bulk electric system definition through the Standards Development process, the Canadian commenters will be able to raise and address a number of their substantive concerns in that forum.

(4) Summary

96. In general, the Final Rule identifies the reliability concerns created by the current definition and a method to ensure that certain facilities needed for the reliable operation of the nation's bulk electric system are subject to mandatory and enforceable Reliability Standards, and that exemption methodologies would be developed by NERC and subject to Commission review. From the Commission's review, the material impact assessments implemented by NPCC are subjective in nature, and results from such tests are inconsistent in application, as shown through the exclusion of facilities that clearly are needed for reliable operation. Further, we find that the vast majority of 100 kV and above facilities are part of parallel networks with high voltage and extra high voltage facilities and are necessary for reliable operation. As a result, and consistent with our previous statements in Order No. 672,[103] we find it is best for the ERO to establish a uniform definition that eliminates subjectivity and regional variation in order to ensure reliable operation of the bulk electric system. We further find that the existing

[98] The NERC Glossary defines System Operating Limit as: "The value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria."

[99] The NERC Glossary defines Interconnection Reliability Operating Limit as "A System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading Outages that adversely impact the reliability of the Bulk Electric System."

[100] *See* IRO–006–4.1, Requirement R1.

[101] Flowgate 7004 in NPCC, which contains non-bulk electric system facilities, had 31 TLR events totaling 484 hours in 2009 and 44 TLR events totaling 798 hours to date in 2010. Additionally, three other NPCC flowgates that contain non-bulk electric system facilities had TLR events called in 2009 and 2010. Specifically, flowgates 7001, 7002, and 7010 were collectively subject to 11 TLR events totaling 91 hours during that period. *See NERC Transmission Loading Relief Procedure Logs* (October 28, 2010) *available at http://www.nerc.com/filez/Logs/tlrlogs.html.*

[102] Ontario Power at 4.

[103] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290.

NPCC impact test is not a consistent, repeatable, and comprehensive alternative to the bright-line, 100 kV definition we prefer. By directing the ERO to revise the definition of "bulk electric system," through the approach proposed by the Commission, or through an equally effective alternative proposed approach, the Commission is fulfilling its responsibility to ensure reliable operation of the grid.[104] Any alternative proposal from the ERO must be as effective as, or more effective than the 100 kV threshold at ensuring facilities necessary for reliable operation are captured in the definition while also addressing the issues outlined in this Final Rule.

(d) Usage and Definition of "Bulk-Power System"

(1) Comments

97. Anaheim states that the Commission's observation that the term "Bulk-Power System" is somehow broader than the term "bulk electric system," coupled with its refusal to define, explain, or otherwise implement the statutory term, creates substantial uncertainty within the industry concerning the scope of the Reliability Standards going forward.

98. ReliabilityFirst states the use of the terms "bulk electric system" and "Bulk-Power System" at times has created confusion within the industry and in compliance enforcement matters. Therefore, ReliabilityFirst believes that NERC should formally document the use of both terms and, going forward, use a single term and definition for all compliance and enforcement of the Reliability Standards.[105]

99. SCE states that the industry has been seeking final resolution of the statutory term "Bulk-Power System" and requests that the Commission act now and through this Final Rule to resolve the statutory term "Bulk-Power System." It requests that the Commission's Final Rule recognize that the definition of "bulk electric system" developed under this Final Rule is identical to the statutory term "Bulk-Power System" and no further definitional change will take place.

(2) Commission Determination

100. In the NOPR, the Commission addressed the definition of "bulk electric system" and not the definition of the statutory term "Bulk-Power System." Although the statutory term Bulk-Power System defines our jurisdiction, the Commission believes more clarity and certainty is achieved in this context by focusing on whether facilities are part of the bulk electric system. Ensuring that the bulk electric system definition encompasses all facilities necessary to reliably operate an interconnected electric transmission system will not cause the application of the Reliability Standards to extend beyond the jurisdiction prescribed in section 215. The Commission, the ERO, and the Regional Entities will continue to enforce Reliability Standards for facilities that are included in the bulk electric system.

2. Exemption Process

101. The NOPR proposed that a Regional Entity must seek ERO and Commission approval before exempting any transmission facility rated at 100 kV or above from compliance with mandatory Reliability Standards.[106] Pursuant to the NOPR proposal, a Regional Entity would submit proposed facility exclusions to the ERO and then, in turn, the ERO would submit to the Commission for review on a facility-by-facility basis any ERO-approved exception to the proposed threshold of all transmission facilities at 100 kV or above, except for radial transmission facilities serving only load with one transmission source. Any such submission would also include adequate supporting information explaining why it is appropriate to exempt a specific transmission facility that would otherwise satisfy the proposed 100 kV threshold. Only after Commission approval would the proposed exclusion take effect.

(a) Comments

102. Most commenters disagree with the exemption process outlined in the NOPR, and several requested that the Commission abandon the NOPR's proposal or adopt a more streamlined process. NERC and other commenters characterize the Commission's proposal as costly, time consuming, and potentially unworkable.[107] Some parties suggested alternatives, such as the Commission reviewing and approving a Regional Entity's exemption methodology rather than reviewing each individual's exemption application. Other commenters argue that the Commission should approve a methodology that allows the Regional Entities or ERO to perform a facility-by-facility review rather than the Commission.[108] Several commenters requested that the Commission adopt a blanket exemption for distribution facilities, as defined by the Regional Entities, or clarification that the Commission did not intend to include distribution facilities within the scope of the definition of bulk electric system.[109] Commenters also request that the Commission suspend enforcement of Reliability Standards to newly-classified bulk electric system facilities while the Regional Entities evaluate exemption requests.

103. APPA/NRECA argues that the NOPR's approach represents an extreme departure from current practice with respect to allowing appropriate exemptions from the Reliability Standards requirements. APPA/NRECA notes that entities seeking an exemption for even radial line facilities may require NERC and Commission approval before that exemption would take effect, and that these entities would not only have the burden of obtaining the necessary approvals for the exemption but also would have to comply with the Reliability Standards while those approvals are pending.[110] APPA/NRECA contends that the proposal could impose significant burdens on many smaller utilities, some of which have never been subject to Reliability Standards, without affording them any procedural protections and without imposing on Regional Entities the appropriate and parallel burden of demonstrating that expanded authority over low-voltage (less than 100 kV) facilities is necessary to preserve reliability.[111]

104. Alcoa points out that the proposal would increase the costs associated with their facilities in the NPCC region either through additional compliance measures associated with mandatory Reliability Standards or by obtaining approvals for an exemption from such requirements. EEI believes that NERC should determine whether to grant or deny a specific request for an exemption and that Commission approval should not be required in every case. Instead, an appeal to the

[104] As noted previously, any alternative proposal must be as effective as, or superior to, the Commission's proposed approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability.

[105] ReliabilityFirst at 10.

[106] NOPR, FERC Stats. & Regs. ¶ 32,654 at P 18.

[107] *See, e.g.,* Alcoa, BPA, CMUA, Palo Alto, Redding, Constellation/CENG, ICNU, APPA/NRECA, National Grid, NERC, NESCOE, NCPA, NV Energy, Public Power Council, SWTDUG, NYSRC, SCE, State Utility Commissions and Consumer Counsel, TANC, TAPS, Utah Municipal, Wells, WPSC.

[108] *See, e.g.,* EEI, BPA, Utility Services, Inc., NPCC, WECC, TAPS, Santa Clara, NUSCO, Indicated New York Transmission Owners, SWTDUG.

[109] *See, e.g.,* GTC/GSOC, Redding, Dow, NV Energy, PGE, TIEC.

[110] APPA/NRECA at 19–23.

[111] *Id.* at 25–27.

Commission should be available as an option.

105. GTC/GSOC proposes that the definition for a blanket exemption of localized and load-serving lines include: An area serving load that is connected to the rest of that network at a single transmission substation at a single transmission voltage by one or more transmission circuits; tap lines and associated facilities that are required to serve local load only; and transmission lines that are operated open for normal operation.

106. On the other hand, Manitoba Hydro supports the Commission's proposal to require a Regional Entity to obtain NERC and Commission approval prior to exempting any facility rated at 100 kV or above, except for radial transmission facilities serving only load. Manitoba Hydro also believes regulatory review provides a wider opportunity for stakeholder review.

107. Several commenters argue that the Commission should direct modifications to section 500 of the NERC Rules of Procedure, which governs NERC's business practices, including its operation and review processes.[112] For example, NPCC proposes minimal revision to the NERC Rules of Procedure, Section 500 to include a process for evaluating bulk electric system exclusions recommended to NERC by the Regional Entities. NERC states that changes likely will be necessary in the NERC Rules of Procedure and the NERC Statement of Compliance Registry Criteria.

108. TIEC states that many industrial sites are interconnected to the grid through lines rated at or above 100 kV, or otherwise contain lines rated at 100 kV or above within a private use network. TIEC notes that although these lines are operated at a high voltage due to the size of the industrial loads, they are used to provide electric service to end-use industrial customers and do not serve a "transmission" function for the interconnected grid within the meaning of the Commission rules and NERC Reliability Standards. Instead, these facilities deliver electricity from the grid or a cogeneration facility to the consuming loads within a plant site. TIEC states that the Commission should clarify that customer-owned facilities that are used to distribute electricity to consuming facilities on the customer's premises, which do not therefore serve a "transmission" function for the interconnected grid, are not part of the bulk electric system. Alcoa contends that its industrial facilities are connected to the grid using 115 kV lines for efficiency purposes, but that they have no practical impact on the grid, and therefore would be improperly included in the bulk electric system by the proposal.

109. ExxonMobil suggests modifying the definition of the bulk electric system to include "those facilities rated at 100 kV or above intended for the transmission of power within an interconnected grid," *i.e.,* ExxonMobil suggests that the Commission draw a distinction between facilities that could under limited circumstances transmit power but were not intended or designed to be a transmission path. ExxonMobil notes that in order to meet the reliability target requirements to safely and economically operate manufacturing and production facilities, many industrial facilities are fed by two or more utility transmission lines that originate at different utility substations. Due to the magnitude of an industrial site's load, these transmission lines are typically designed to operate at levels in excess of 100 kV at the request of the utility company. These transmission lines typically terminate into an interconnection facility, owned by the industrial facility, that networks the transmission lines together within the industrial facility's private use network in order to serve the load of the facility's private use network. ExxonMobil states that its proposed approach is consistent with the Commission's stated goal of requiring the Regional Entities to register transmission lines that are operated at the 100 kV level and above; while at the same time clearly excluding end user facilities rated 100 kV or above.

110. ERCOT suggests that the Commission should consider imposing a parallel process for including facilities that are below 100 kV in the bulk electric system. ERCOT notes that presently, facilities below 100 kV generally are not considered part of the bulk electric system, but the Regional Entities can explicitly include facilities below 100 kV if they are deemed "critical facilities." ERCOT states that "Regional Entities should not have unbounded unilateral discretion to make such designations given the potential impact to affected parties."[113] Thus, consistent with the Commission's proposal to subject all 100 kV and above exemptions to due process, ERCOT asks the Commission to consider imposing a similar process for the inclusion of facilities below 100 kV.

(b) Commission Determination

111. As mentioned above, the NOPR proposed an exemption process pursuant to which a Regional Entity would seek ERO and Commission approval before exempting a transmission facility rated at 100 kV or above from compliance with the Reliability Standards. In response to the NOPR proposal, we received numerous comments that the proposed exemption process would be costly, time-consuming and potentially unworkable. Other commenters expressed concern that the proposal was unduly burdensome, particularly on smaller entities. We continue to believe that an exemption process is appropriate and is complementary to our directive, discussed earlier, that the ERO develop a revised definition of the term bulk electric system that addresses the concerns resulting from the current discretion of Regional Entities to develop alternative regional definitions of the term. However, we are persuaded by the commenters' concerns and the Final Rule does not adopt the exemption model proposed in the NOPR.

112. Rather than devising a revised exemption process in the Final Rule, we direct the ERO to develop a proposed exemption process. We believe that it is appropriate that NERC develop the process in its function as the ERO. Further, allowing the ERO to develop an appropriate exemption process should provide interested stakeholders an opportunity to participate in the development of the process, as requested by some commenters. This stakeholder participation should result in a process with practical application that is less burdensome than the NOPR proposal.

113. The ERO must submit the proposed exemption process within one year of the effective date of this Final Rule. After notice and opportunity for comment, the Commission will act on the ERO's proposal.

114. We will not dictate the substance or content of the exemption process in this Final Rule. Rather, we identify below several matters or concerns that should be addressed in an acceptable exemption process.

115. NERC should develop an exemption process that includes clear, objective, transparent, and uniformly applicable criteria for exemption of facilities that are not necessary for operating the grid. The ERO also should determine any related changes to its Rules of Procedures that may be required to implement the exemption process, and file the proposed

[112] *See, e.g.,* NERC, NPCC, and Utility Services.

[113] ERCOT at 2.

exemption process and rule changes with the Commission.

116. As indicated above, since we are not adopting the exemption model proposed in the NOPR, we no longer contemplate a process that requires Commission review of each request for exemption. However, in order to avoid an inconsistent application of the exemption process, NERC should oversee the facility-by-facility exemption process to ensure an objective and uniform application of the exemption criteria that it develops. NERC may consider delegating responsibilities for the exemption process to Regional Entities, so long as the process is clear and capable of being applied consistently, objectively and uniformly across all regions. However, consistent with our statements in Order No. 672 regarding the need for a strong ERO, NERC should maintain oversight of any Regional Entity activity.[114] We believe ERO oversight is also vital in ensuring consistent application of any nation-wide exemption criteria that the ERO develops.

117. While the Commission will not require that we review each exemption on a facility-by-facility basis, we would maintain the authority to conduct audits to determine the appropriateness of a particular exemption. We contemplate that a Commission staff audit would review the application of the exemption criteria developed by NERC in NERC's or a Regional Entity's determination to approve an exemption for a particular facility. However, to facilitate such audits, the ERO should maintain a list of exempted facilities that can be made available to the Commission upon request. NERC can decide how best to maintain the list, including determining whether or not to post it on the NERC Web site.

118. Additionally, the ERO should consider developing criteria for revoking an exemption if a particular transmission facility no longer qualifies for such an exemption. This may be appropriate, for example, when a transmission system in the vicinity undergoes a significant change.

119. A number of comments raised concerns that the Commission's directive that the ERO revise the definition of bulk electric system would result in the erroneous inclusion of distribution facilities within the definition. As we explained above, these arguments are unconvincing because the majority of facilities operated at or above 100 kV are parallel paths that are necessary for the reliable operation of the transmission system. In addition, the exemption process provides a means of ensuring that relatively high voltage distribution facilities are excluded from compliance with mandatory Reliability Standards. In this light, we believe that it would be beneficial for the ERO, in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities.

120. In response to comments seeking a blanket exemption for industrial facilities, the Commission is not inclined to grant categorical exemptions of any kind. However, NERC should consider the parties' concerns regarding exemption categories in developing an exemption process and criteria. Entities can submit specific facilities for exemption through the NERC-developed exemption process. As previously discussed, radial facilities, as well as facilities used in the local distribution of electric energy as provided in section 215, will continue to be excluded.

121. We agree with ERCOT's suggestion that the ERO should develop a parallel process for including as part of the bulk electric system "critical" facilities, operated at less than 100 kV, that the Regional Entities determine are necessary for operating the interconnected transmission network. Currently, Regional Entities have the ability to include "critical" facilities operated below 100 kV.[115] We believe that it would be worthwhile for NERC to consider formalizing the criteria for inclusion of critical facilities operated below 100 kV in developing the exemption process. Additionally, we note that Order No. 716 creates a process to include critical facilities under NUC–001–1.[116] Similarly, we note that Order No. 733 creates an additional "add in" approach to sub-100 kV facilities that Regional Entities and planning coordinators have identified as critical to the reliability of the bulk electric system.[117]

3. Transition Process

122. In the NOPR, the Commission proposed to allow a Regional Entity affected by the Commission's Final Rule to submit a transition plan that allows a reasonable period of time for affected entities within that region to achieve compliance with respect to facilities that are subject to Commission-approved Reliability Standards for the first time.[118]

(a) Comments

123. Certain commenters argue that the NOPR fails to clearly detail a transition process for bringing additional facilities into compliance with Commission-approved Reliability Standards.[119] APPA/NRECA believe that if the definition of bulk electric system is ultimately modified, NERC should be responsible for developing a clear and achievable transition plan to bring new facilities (and entities) into compliance.[120] APPA/NRECA further note that the NOPR is somewhat inconsistent in its discussion of a transition plan and required compliance, recognizing at one point that a transition plan for newly-affected facilities would be appropriate while elsewhere stating that facilities falling within the broad definition of bulk electric system would only be exempt after Commission approval.[121]

124. National Grid requests that the Commission allow entities affected by the new rule the opportunity to develop a reasonable transition plan for bringing existing facilities into compliance with newly-applicable Commission-approved Reliability Standards, through a collaborative process involving NERC, Regional Entities, state commissions and other affected parties.[122] National Grid notes that the process for bringing all of its and its subsidiaries' newly-affected facilities into compliance could take several years and would require significant increases in operations and maintenance costs as well as capital expenditures.[123] National Grid suggests a transition period of 24–36 months would be necessary to study and to begin to implement compliance programs.[124]

125. Several commenters state that the Final Rule should include a sufficient transition period, and many propose specific minimum transition time periods.[125] For example, FRCC

[114] Order No. 672, FERC Stats. & Regs ¶ 31,204 at P 140, 654.

[115] *See, e.g.,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 77.

[116] *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* Order No. 716, 125 FERC ¶ 61,065, at P 51–53 (2008), *order on reh'g,* Order No. 716–A, 126 FERC ¶ 61,122 (2009).

[117] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221, at P 20–25, 47, 60, 62 (2010).

[118] NOPR, FERC Stats. & Regs. ¶ 32,654 at P 27.

[119] *See, e.g.,* APPA/NRECA and Bay Area Municipal.

[120] APPA/NRECA at 4.

[121] *Id.* at 35.

[122] National Grid at 5.

[123] *Id.* at 3, 8 (estimating compliance costs for transmission planning standards alone to be $75 million to $125 million).

[124] *Id.* at 5–6.

[125] *See, e.g.,* APPA/NRECA, EEI, FRCC, NERC, NPCC, National Grid, NYISO, Northeast Utilities, Indicated New York Transmission Owners, and Utah Municipal.

recommends a transition period of 24 months for Registered Entities to phase in compliance of additional facilities with Commission-approved Reliability Standards.[126]

126. NPCC recommends that the effective date of any new bulk electric system definition be 24 months following the Commission's Final Rule and that within 90 days of the Final Rule, all Registered Entities be required to submit implementation plans to bring all newly identified bulk electric system facilities into compliance and submit any needed changes in registration by the effective date of the bulk electric system definition.[127]

127. Likewise, NYISO recommends that the effective date of any new definition should be no sooner than 24 months following the effective date of a Commission order requiring compliance with that definition.[128] NYISO further argues that during the transition period, no parties should be required to self-report or be deemed non-compliant by NPCC.[129]

128. Several commenters request that the Commission provide for temporary waivers from enforcement of Commission-approved Reliability Standards while entities wait for initial exemption requests to be processed.[130] For example, Utility Services argues that the Commission must grant a temporary waiver for audit, certification, or other compliance requirements to any requesting Registered Entity while its application is pending at the regional, NERC, or Commission levels, as this process has already been deemed acceptable by the Commission in the technical feasibility exemptions for cyber security.[131] Similarly, ELCON argues that the Commission should clarify that a facility will not be subject to the obligations of registered status until the notification and any review process, followed by the transition period, is completed.[132]

129. Dow argues that the Commission must afford companies an opportunity to secure facility-specific exemptions before the Commission-approved Reliability Standards become applicable to those facilities.[133]

130. NYISO further argues that during the transition period no parties should be required to self-report or be deemed non-compliant by a Regional Entity.

(b) Commission Determination

131. As discussed above, we are directing the ERO to revise the definition through the Standards Development Process. We direct NERC to work with the Regional Entities affected by this Final Rule to submit for Commission approval transition plans that allow a reasonable period of time for the affected entities within each region to achieve compliance with respect to facilities that are subject to Commission-approved Reliability Standards for the first time based on a revised bulk electric system definition. The Commission expects that NPCC is the only region that will be significantly affected. Based on ReliabilityFirst's experience in adopting a "bright-line" definition for bulk electric system facilities, we expect transition periods not to exceed 18 months from the time the Commission approves a revised definition and exemption process, unless the Commission approves a longer transition period based on specific justification. The Commission directs NERC to file the proposed transition plans within one year of the effective date of this Final Rule.

132. While the Commission is sensitive to commenters' concerns regarding non-compliance during the transition period, the Commission will not provide a trial period, as we declined to do in Order No. 693,[134] with respect to those facilities that are subject to Commission-approved Reliability Standards for the first time. We expect that the transition periods will be long enough for exemption requests to be processed and to allow entities to bring newly-included facilities into compliance prior to the mandatory enforcement date. Additionally, the ERO and Regional Entities may exercise their enforcement discretion during the transition period.

4. Cost Recovery

(a) Comments

133. The Indicated New York Transmission Owners requested that the Commission provide a new process to ensure recovery for costs incurred by NPCC members to comply with implementation of the new definition of bulk electric system.[135] While not seeking a specific cost recovery mechanism, other commenters noted their concern that the transition period established by the Commission must be sufficient to allow affected companies to recover any one-time or annual compliance costs incurred.[136] NYISO states that implementing the 100 kV "bulk electric system" definition in the New York Control Area will cause it to incur increased capital costs and staff additions for which cost recovery will be required.[137]

(b) Commission Determination

134. We note that the Commission has adopted an explicit rule, as required under Section 219(b)(4) of EPAct 2005, allowing the recovery of "all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215,"[138] and that the proposed modifications to the definition of bulk electric system do not raise any new issues with respect to cost recovery of reliability compliance costs. Finally, the transition plan that we direct herein will facilitate an opportunity for transmission owners and any other affected entities to recover any one-time or annual costs of compliance that result from any changes to the definition of "bulk electric system" as ultimately adopted by NERC.

5. Issues Regarding the Western Interconnection

(a) Comments

135. Several entities from the Western Interconnection state that the proposal should not apply to the Western Interconnection because the West is built and operated differently.[139] The parties argue that 100–200 kV facilities in the West are often used for distribution of power and have a limited or no impact on reliability over the wider area.[140] Multiple entities supported utilizing a technical test to differentiate which facilities should be included, such as the material impact assessment methodology currently being developed by the WECC BESDTF.[141] Several commenters also argue that the proposal would be expensive to implement while providing minimal reliability benefits.

136. State Utility Commissions and Consumer Counsel state that facilities ranging from 100–199 kV in the West are typically used for radial distribution or local area distribution networks, and not necessarily for bulk power

[126] FRCC at 9.

[127] NPCC at 5.

[128] NYISO at 8–9.

[129] *Id.*

[130] *See, e.g.,* Utility Services, Dow, and ELCON.

[131] Utility Services at 5.

[132] ELCON at 5.

[133] Dow at 7.

[134] Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 221–222.

[135] Indicated New York Transmission Owners at 11.

[136] *See, e.g.,* Northeast Utilities at 6.

[137] NYISO at 11.

[138] 16 U.S.C. 824s(b)(4)(A); *see also* 18 CFR 35.35(f)(2010).

[139] *See, e.g.,* WECC, State Utility Commissions and Consumer Counsel, WPSC, Joint Western Commenters, Snohomish.

[140] *Id.*

[141] *See, e.g.,* Bay Area Municipal, Joint Western Commenters, Redding, NV Energy, Snohomish, Tacoma Power, Utah Municipal.

transmission.[142] They believe that a 200 kV bulk electric system threshold reflects the usage and history of the Western Interconnection.[143] They further argue that nearly all new transmission in the West is being built at 500 and 230 kV and that the average line capacity of 100–199 kV lines makes up a very small percentage of the overall network capacity in the West.[144]

137. The WPSC notes that certain utilities within its service area have elected to build distribution facilities above 100 kV, and such utilities could become subject to substantial compliance costs without measurable benefits under the proposed bright-line rule.[145] Moreover, if the 100 kV threshold is adopted, certain commenters are concerned that utilities will elect to build facilities below 100 kV in order to avoid complying with the Commission-approved Reliability Standards.[146]

138. Likewise, Utah Municipal argues that any proposal to classify facilities in excess of 100 kV as part of the bulk electric system may be appropriate for the Eastern Interconnection, but that such an approach is inappropriate and extremely burdensome for entities in the Western Interconnection.[147] Utah Municipal further notes that the NOPR does not address the "demonstrable differences between the Western and Eastern Interconnections," i.e., that the spread out nature of the West makes use of lines over 100 kV appropriate for use as distribution lines.[148] Rather than adopting an across the board change in each region's approach to determining "bulk electric system" facilities, Utah Municipal recommends letting the WECC BESDTF finish work on its hybrid threshold and material impact assessment classification, and requests that the Commission defer to the technical experts at Regional Entities such as WECC regarding any bulk electric system definition change.[149]

(b) Commission Determination

139. The Commission does not agree with the commenters' arguments that 100–199 kV facilities in the Western Interconnection should be treated differently than facilities in the Eastern Interconnection as a threshold matter. The bulk electric system definition should include all facilities that are necessary for operating an interconnected electric transmission network. While commenters have implied that not all 100–199 kV facilities are needed for reliable operation, the Commission notes that 100 kV and some lower voltage facilities are included in some of the WECC Rated Paths. Clearly, these facilities are operationally significant and needed for reliable operation as identified by certain WECC documents.[150] Any entity wishing to seek exemption of non-radial facilities from compliance with Commission-approved Reliability Standards may utilize the exemption process NERC will develop. While the Western Interconnection has a higher percentage of transmission facilities above 200 kV compared to the Eastern Interconnection,[151] it is how the lines below 200 kV are interconnected with higher voltage facilities that determines their significance.

140. Therefore, commenters have not provided adequate explanation in this proceeding, supported by data and analysis, as to why there is a physical difference upon which to treat the Western Interconnection differently. In fact, the present WECC definition uses 100 kV as the threshold for classifying bulk electric system facilities.[152] The Commission understands that the audits performed by WECC and self-reporting by entities includes all facilities 100 kV and above.[153]

141. Further, the suggestion that the modifications should not apply to the West contradicts guidance regarding Reliability Standards from Order No. 672. Order No. 672 details several factors the Commission will consider in determining whether a proposed Reliability Standard is just and reasonable. One of the factors indicates that a "proposed Reliability Standard should be designed to apply throughout the interconnected North American Bulk-Power System, to the maximum extent this is achievable with a single Reliability Standard."[154] Moreover, and particularly compelling with respect to the definition of bulk electric system, Order No. 672 indicates that proposed Reliability Standards "should be clear and unambiguous regarding what is required and who is required to comply."[155] Eliminating broad regional discretion without ERO or Commission oversight and maintaining a 100 kV bright-line definition, coupled with an exemption process, removes any ambiguity regarding who is required to comply and accomplishes the goal of reducing inconsistencies across regions. Commenters have not provided compelling evidence that the proposed definition should not apply to the United States portion of the Western Interconnection as a threshold matter. As Order No. 672 detailed, however, the regions may propose: (1) A regional difference that is more stringent than the continent-wide definition, including a regional difference that addresses matters that the continent-wide definition does not; or (2) a regional definition that is necessitated by a physical difference in the Bulk-Power System. Should a region decide to propose a regional difference, in addition to the criteria above, such a proposal must address the Commission's concerns with the present definition with the understanding that any such alternative must be as effective as, or more effective than, the Commission's proposed approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability.[156]

6. Impact on Generation Owners and Operators

(a) Comments

142. NERC and several other commenters raise the concern that the revised definition could bring a large number of generator owners and generator operators within the ambit of the Reliability Standards for the first time, and could result in an extremely large number of exemption requests despite the fact that the relevant facilities can have limited or no impact on the Bulk-Power System.[157] NERC and other commenters generally request that the Ad Hoc Group for Generator Requirements at the Transmission Interface (the "GOTO task force")[158]

[142] State Utility Commissions and Consumer Counsel at 2.

[143] *Id.*

[144] *Id.*

[145] WPSC at 2–3.

[146] *Id.* at 2–3, 5; Utah Municipal at 6–7.

[147] Utah Municipal at 5–7.

[148] *Id.* at 8.

[149] *Id.* at 13.

[150] *See* WECC Rated Path Catalog.

[151] In the Western Interconnection, 59 percent of the total circuit miles of transmission lines above 100 kV also are above 200 kV, compared to 43 percent in the Eastern Interconnection. *See* NOPR, FERC Stats. & Regs. ¶ 32,654 at n. 36.

[152] *See http://www.wecc.biz/Standards/Development/BES/default.aspx.*

[153] June 2007 Filing at 13–14.

[154] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 331.

[155] *Id.* at P 325.

[156] *See, e.g., Version One Regional Reliability Standard for Resource and Demand Balancing,* 133 FERC ¶ 61,063, at P 14 (2010); *North American Electric Reliability Corporation Reliability Standards Development and NERC and Regional Entity Enforcement,* 132 FERC ¶ 61,217 at P 112 (2010).

[157] NERC at 12–14; *see also* Palo Alto at 6–7, NCPA at 6–10.

[158] NERC has undertaken an initiative to address the special circumstances associated with generators and to determine which Reliability Standards might be inappropriate for such limited facilities. The GOTO task force was formed in February 2009, and included a broad array of participants across regions and industry segments,

findings and process be taken into account as part of any final Commission rule, and/or that any new "bulk electric system" definition otherwise adopted be developed in concert with the GOTO task force findings.[159]

143. A few other parties request additional clarification with respect to the proposed rule's applicability to generation facilities. The U.S. Department of the Interior suggests that the Commission clarify its policy regarding the exclusion of radial lines from the bulk electric system definition, such that transmission facilities linking small generators are also treated as excluded radial lines.[160] WECC notes that the Commission's proposed bright-line standard is somewhat unclear, in that parts of the NOPR suggest that the 100 kV standard would apply only to transmission facilities, while the current "bulk electric system" definition used by NERC applies to transmission, generation, and interconnection facilities.

(b) Commission Determination

144. We expect that our decision to direct NERC to develop a uniform modified definition of "bulk-electric system" will eliminate regional discretion and ambiguity. The change will not significantly increase the scope of the present definition, which applies to transmission, generation and interconnection facilities. The proposed exemption process will provide sufficient means for entities that do not believe particular facilities are necessary for operating the interconnected transmission system to apply for an exemption.

145. As noted above, NERC has undertaken an initiative to address the special circumstances associated with such generators.[161] Although the NERC Board of Trustees has not approved any action arising from the GOTO task force at this time, the task force members may submit their comments and report to NERC for its consideration as NERC develops an exemption process.

7. Clarifying Terms

(a) Comments

146. Several commenters seek clarification on the definitions and implications of specific terms and concepts such as "integrated transmission element" and "material impact."[162]

147. For example, the North Carolina Independent Cooperatives request that the Commission clarify the terms "integrated transmission element" and "material impact." They state that unless these terms are clarified there is a real danger that very small facilities will be unnecessarily included in the bulk electric system and their owners subjected to unreasonable compliance costs. The North Carolina Independent Cooperatives propose that the Commission adopt additional factors to determine the types of facilities that fall within or outside of the scope of these terms.

148. ReliabilityFirst requests clarification on whether transformers with a high side winding above 100 kV and a low side winding below 100 kV are included in the bulk electric system definition. It argues that, to eliminate uncertainty, "any and all" facilities that operate at 100 kV or above should be considered bulk electric system facilities, even if, for example, one transformer winding operates below 100 kV.[163]

(b) Commission Determination

149. With regard to ReliabilityFirst's comments, we agree with its developed delineation point with regard to "step-down" transformers, but note that these kinds of refinements can and should be addressed as part of NERC's exemption process.

150. We disagree with commenters that definitions of "integrated transmission elements" and "material impact" are needed to implement this Final Rule. These terms are not defined by the present bulk electric system definition, and defining these terms is not necessary to revise the definition as directed herein. Whether specific facilities have a material impact is not dispositive with respect to whether they are needed for reliable operation. These questions are more appropriately addressed through development of an exemption process at NERC.

III. Information Collection Statement

151. The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–725–A "Revision of Definition of Bulk Electric System." Under section 3507(d) of the Paperwork Reduction Act of 1995,[164] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: *oira_submission@omb.eop.gov*).

152. The "public protection" provisions of the Paperwork Reduction Act of 1995 require each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection number cannot be displayed. In the case of information collections published in regulations, the control number is to be published in the **Federal Register.**

153. *Public Reporting Burden:* In the NOPR, the Commission based its estimate of the Public Reporting Burden on its belief that only one Regional Entity, NPCC, would be immediately affected by the Commission's proposal. In particular the Commission stated that the transmission owners, transmission operators and transmission service providers in the U.S. portion of the NPCC region would be affected by the Commission's proposal. Based on registration information available on NPCC's Web site, it appeared that approximately 33 transmission owners, transmission operators and transmission service providers in the U.S. portion of the NPCC region would potentially be affected by the Commission's proposal.[165] These entities are currently responsible for complying with applicable mandatory Reliability

with representatives from operating and planning perspectives. The GOTO task force developed a Final Report, issued in November 2009, and has submitted a Standards Authorization Request to NERC to implement its proposed recommendations. *See* Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface and related materials, *available at http://www.nerc.com/filez/standards/Project2010-07_GOTO_Project.html.*

[159] NERC at 14; Palo Alto at 7, NCPA at 9–10.

[160] U.S. Department of Interior at 1–2 (suggesting that small generators be defined as set out in the NERC Statement of Compliance Registry Criteria, Section III(c)).

[161] The GOTO task force was formed in February 2009, and included a broad array of participants across regions and industry segments, with representatives from operating and planning perspectives. The GOTO task force developed a Final Report, issued in November 2009, and has submitted a Standards Authorization Request to NERC to implement its proposed recommendations. NERC and other commenters generally request that the GOTO task force findings and process be taken into account as part of any final Commission rule, and/or that any new "bulk electric system" definition otherwise adopted be developed in concert with the GOTO task force findings.

[162] *See, e.g.,* North Carolina Independent Cooperatives, SWTDUG.

[163] ReliabilityFirst at 6.

[164] 44 U.S.C. 3507(d).

[165] "NPPC Registered Entities as of January 13, 2010," available on the NPCC Web site: *http://www.npcc.org/.*

Standards approved by the Commission in Order No. 693 and subsequent orders. Given these parameters, the Commission estimated the Public Reporting Burden as follows:

Data collection FERC–725–A	Numbers of respondents	Numbers of responses	Hours per respondent	Total annual hours
Transmission Owners, Transmission Operators and Transmission Service Providers in the U.S. portion of the NPCC Region.	33	1	Reporting: 0	Reporting: 0.
			Recordkeeping: 500	Recordkeeping: 16,500.
Total				16,500.

154. Based on the available information, the Commission estimated that 33 entities would be affected by the proposal. The Commission also estimated that it would require 16,500 total annual hours for collection (reporting and recordkeeping) and that the average annualized cost of compliance would be $660,000 ($40/hour for 16,500 hours; the Commission based the $40/hour estimate on $17/hour for a file/record clerk and $23/hour for a supervisor).

155. Commenters argue that the Commission has severely underestimated the potential impact of the change in the definition of bulk electric system and the exemption process as proposed in the NOPR. APPA/NRECA asserts that the NOPR is deficient in its assessment of the public reporting burden.[166] APPA/NRECA argues that the burden of compliance and/or of obtaining exempt status is significant and reaches far beyond entities in NPCC. Moreover, APPA/NRECA notes that the Commission has used underlying assumptions about the kind and cost of work needed to comply with the change in rules that significantly underestimate the costs associated with compliance. Finally, APPA/NRECA argues that the NOPR is deficient in failing to make any assessment of the increased burden related to the change in the Commission's approach to allowing lower-voltage (less than 100 kV) facilities to be included as part of the bulk electric system by a Regional Entity.

156. Snohomish argues that the NOPR does not reflect the existing practice outside NPCC and that the Commission is simply wrong in asserting that the NOPR proposal would not substantially increase regulatory compliance burdens. Snohomish asserts that the Commission's stated basis for compliance with the Paperwork Reduction Act and associated regulations is incorrect.

157. Given the Commission's decision to direct NERC to develop a revised bulk electric system definition, rather than implement the NOPR's proposal, and by granting certain clarifications, some of the comments are no longer relevant and the remainder are best responded to in a future order addressing the revised definition developed by NERC. By directing NERC to develop a revised definition, the Commission is maintaining the status quo (i.e., the current bulk electric system definition) until the Commission approves a revised definition. Thus, the Commission's action does not add to or increase entities' reporting burden.

IV. Environmental Analysis

158. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[167] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[168] Accordingly, neither an environmental impact statement nor environmental assessment is required.

159. Greenburgh Environmental Forum LORAX Working Group (Greenburgh) states that the Commission must address the environmental impact of the NOPR on the human environment.[169]

160. We disagree with Greenburgh. Any revised bulk electric system definition the ERO develops will not modify thresholds established in individual Reliability Standards such as FAC–003 with respect to vegetation management. The Final Rule requires the ERO to clarify which facilities will be included within the definition of "bulk electric system" and the actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.

V. Regulatory Flexibility Act Analysis

161. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of any final rule that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking, but rather requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

162. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analyses available for public comment. In its NOPR, the agency must either include an Initial Regulatory Flexibility Act Analysis (Initial Analysis) or certify that the proposed rule will not have a "significant impact on a substantial number of small entities."

163. If, in preparing the NOPR, an agency determines that the proposal could have a significant impact on a substantial number of small entities, the agency shall ensure that small entities will have an opportunity to participate in the rulemaking procedure.

164. In its Final Rule, the agency must also either prepare a Final Regulatory Flexibility Act Analysis (Final Analysis) or make the requisite certification. Based on the comments the agency receives on the NOPR, it can alter its

[166] APPA/NRECA at 37–40.

[167] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regs. Preambles 1986–1990 30,783 (1987).

[168] 18 CFR 380.4(a)(5).

[169] Greenburgh at 2.

original position as expressed in the NOPR but it is not required to make any substantive changes to the proposed regulation.

165. The statute provides for judicial review of an agency's final RFA certification or Final Analysis. An agency must file a Final Analysis demonstrating a "reasonable, good-faith effort" to carry out the RFA mandate. However, the RFA is a procedural, not a substantive, mandate. An agency is only required to demonstrate a reasonable, good faith effort to review the impact the proposed rule would place on small entities, any alternatives that would address the agency's and small entities' concerns and their impact, provide small entities the opportunity to comment on the proposals, and review and address comments. An agency is not required to adopt the least burdensome rule. Further, the RFA does not require an agency to assess the impact of a rule on all small entities that may be affected by the rule, only on those entities that the agency directly regulates and that are subject to the requirements of the rule.

A. NOPR Proposal

166. In the NOPR, the Commission stated that the immediate effect of the proposed directive that the ERO revise its current definition of bulk electric system to establish a 100 kV threshold would likely be limited to certain transmission owners, transmission operators and transmission service providers in the U.S. portion of the NPCC region. Most transmission owners, transmission operators and transmission service providers do not fall within the definition of small entities. The Commission estimated that approximately four of the 33 transmission owners, transmission operators and transmission services providers may fall within the definition of small entities. The Commission determined that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

B. Comments

167. APPA/NRECA state that the Commission's RFA statement is flawed, in that the likely impacts of the proposed rule will reach far beyond entities in NPCC. APPA/NRECA argues that it is a substantial possibility that a substantial number of entities outside of NPCC will be affected by the proposal. As such, it asks for a delay in implementing the proposal in order to avoid impacting a broader group of smaller entities.[170]

168. TAPS generally supports the APPA/NRECA comments on the Commission's RFA analysis. TAPS argues that the NOPR's RFA Certification, which states that only a few (presumably already-registered) transmission owners, transmission operators, and transmission service providers in the NPCC footprint would be affected by this rulemaking, is fatally flawed.[171]

C. Commission Determination

169. The Commission disagrees with commenters that challenge the Commission's conclusion that the rule will not have a significant economic impact on a substantial number of small entities. Commenters have not made specific assertions regarding how the Commission's analysis is erroneous or in what ways the Final Rule will have a significant economic impact on a substantial number of small entities. As the Commission stated in its NOPR, most transmission owners, transmission operators and transmission service providers do not fall within the definition of small entities. Further, the Commission has suggested that the ERO create an appropriate exemption process and this will further ensure that the Final Rule minimally affects small entities. In addition, the ability of Regional Entities to identify "critical" facilities, operated at less than 100 kV, and require these facilities to comply with mandatory Reliability Facilities is not new. Our direction here that the ERO formalize the process for including such facilities will provide additional protections to small entities. Based on this analysis, we certify that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no further RFA analysis is required.

VI. Document Availability

170. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

171. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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VII. Effective Date and Congressional Notification

173. These regulations are effective January 25, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

APPENDIX A

Commenter	Abbreviation
Alcoa Inc. and Alcoa Power Generating Inc	Alcoa
American Public Power Association and the National Rural Electric Cooperative Association	APPA/NRECA

[170] APPA/NRECA at 41–42.

[171] TAPS at 12.

APPENDIX A—Continued

Commenter	Abbreviation
Baltimore Gas and Electric Company	BGE
Bay Area Municipal Transmission Group	Bay Area Municipal
Bonneville Power Administration	BPA
California Municipal Utilities Association	CMUA
California Public Utilities Commission	CPUC
Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation.	Indicated New York Transmission Owners
City of Anaheim, California	Anaheim
City of Palo Alto, California	Palo Alto
City of Redding, California	Redding
City of Santa Clara, California d/b/a Silicon Valley Power	Santa Clara
Constellation Energy Commodities Group, Inc., Constellation Energy Control and Dispatch, LLC, Constellation Energy Nuclear Group, LLC, Constellation NewEnergy, Inc. and Constellation Power Source Generation, Inc.	Constellation/CENG
Consumers Energy Company	Consumers Energy
Dow Chemical Company	Dow
Duke Energy Corporation	Duke Energy
Edison Electric Institute	EEI
Electric Reliability Council of Texas, Inc	ERCOT
Electricity Consumers Resource Council	ELCON
ExxonMobil Research and Engineering	ExxonMobil
Florida Reliability Coordinating Council	FRCC
Georgia Transmission Corporation and Georgia System Operations Corporation	GTC/GSOC
Greenburgh Environmental Forum LORAX Working Group	Greenburgh
Hydro-Québec TransÉnergie	Hydro-Québec
Independent Electricity System Operator, Hydro One Networks Inc., Ontario Power Generation Inc., Five Nations Energy Inc., Brookfield Renewable Power Inc., New Brunswick System Operator, and Nova Scotia Power Inc.	Joint Canadian Parties
Industrial Customers of Northwest Utilities	ICNU
ISO New England Inc.	ISO–NE
Large Public Power Council	
Manitoba Hydro	
National Association of Regulatory Utility Commissioners	NARUC
National Grid USA	National Grid
Nevada Power Company and Sierra Pacific Power Company, d/b/a NV Energy	NV Energy
New England States Committee on Electricity	NESCOE
New York Independent System Operator, Inc	NYISO
New York State Public Service Commission	NYPSC
New York State Reliability Council, L.L.C.	NYSRC
North American Electric Reliability Corporation	NERC
North Carolina Independent Cooperatives	
Northeast Power Coordinating Council, Inc	NPCC
Northeast Utilities Service Company	Northeast Utilities
Northern California Power Agency	NCPA
Ontario Power Generation Inc	Ontario Power
Joint Western Commenters	Joint Western Commenters
Benton Rural Electric Association	
Big Bend Electric Cooperative	
Blachley-Lane Electric Cooperative	
Central Electric Cooperative	
Central Lincoln People's Utility District	
City of Ellensburg, Washington	
City of Richland, Washington	
Clearwater Power Company	
Consumers Power	
Coos-Curry Electric Cooperative	
Douglas Electric Cooperative	
Eugene Water & Electric Board	
Fall River Rural Electric Cooperative	
Fergus Electric Cooperative, Inc.	
Idaho Falls Power	
Inland Power and Light Company	
Lane Electric Cooperative	
Lincoln Electric Cooperative	
Lost River Electric Cooperative	
Northern Lights	
Northwest Public Power Association	
Northwest Requirements Utilities	
Okanogan Electric Cooperative	
Pacific Northwest Generating Cooperative	
Public Utility District No. 1 of Douglas County, Washington	

APPENDIX A—Continued

Commenter	Abbreviation
Public Utility District No. 1 of Klickitat County, Washington	
Raft River Rural Electric Cooperative	
Salmon River Electric Cooperative	
Tillamook PUD	
Umatilla Electric Cooperative	
Wells Rural Electric Company	
West Oregon Electric Cooperative	
Western Montana Electric Generating and Transmission Cooperative, Inc	
Portland General Electric Company	PGE
Public Power Council	
Public Utility District No. 1 of Snohomish County, Washington	Snohomish
Reliability*First* Corporation	ReliabilityFirst
Southern California Edison Company	SCE
Southern Company Services, Inc	Southern Company
Southwest Transmission Dependent Utility Group	SWTDUG
State Utility Commissions and Consumer Counsel	
Idaho Public Utilities Commission	
Montana Public Service Commission	
Montana Consumer Counsel	
Oregon Public Utility Commission	
Utah Public Service Commission	
Washington Utilities and Transportation Commission	
Tacoma Power	
Texas Industrial Energy Consumers	TIEC
Transmission Access Policy Study Group	TAPS
Transmission Agency of Northern California	TANC
U.S. Department of the Interior	
Utah Associated Municipal Power Systems	Utah Municipal
Utility Services, Inc	Utility Services
Virginia Electric and Power Company, d/b/a Dominion Virginia Power	Dominion Power
Western Electricity Coordinating Council	WECC
Wyoming Public Service Commission	WPSC

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