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Presidential Documents

Title 3—

The President

Proclamation 8610 of December 1, 2010

National Impaired Driving Prevention Month, 2010

By the President of the United States of America

A Proclamation

Every day, millions of Americans travel on our Nation's roadways. Thousands of these drivers and passengers tragically lose their lives each year because of drunk, drugged, or distracted driving. During National Impaired Driving Prevention Month, we recommit to preventing the loss of life by practicing safe driving practices and reminding others to be sober, drug-free, and safe on the road.

Impaired driving and its consequences can seriously alter or even destroy lives and property in a moment. This reckless behavior not only includes drunk driving, but also the growing problem of drugged driving. Drugs, including those prescribed by a physician, can impair judgment and motor skills. It is critical that we encourage our young people and fellow citizens to make responsible decisions when driving or riding as a passenger, especially if drug use is apparent.

This National Impaired Driving Prevention Month, we must also draw attention to the dangers of distracted driving, including using electronic equipment or texting while behind the wheel of a vehicle. When people take their attention away from the road to answer a call, respond to a message, or use a device, they put themselves and others at risk. Distracted driving is a serious, life-threatening practice, and I encourage everyone to visit Distraction.gov to learn how to prevent distracted driving.

My Administration is dedicated to strengthening efforts against drunk, drugged, and distracted driving. To lead by example, we have implemented a nationwide ban prohibiting Federal employees from texting while driving on Government business or when using a Government device. This holiday season, the United States Department of Transportation's National Highway Traffic Safety Administration is also sponsoring the campaign, "Drunk Driving: Over the Limit. Under Arrest." Thousands of police departments and law enforcement agencies across the Nation will redouble their efforts to ensure impaired drivers are detected and appropriate action is taken. Additionally, the Office of National Drug Control Policy is working with Federal agencies to raise public awareness about the high prevalence of drugged driving in our country, and to provide resources for parents of new drivers about how to talk to their children about drugs.

As responsible citizens, we must not wait until tragedy strikes, and we must take an active role in preventing debilitated driving. Individuals, families, businesses, community organizations, drug-free coalitions, and faith-based groups can promote substance abuse prevention and encourage alternative sources of transportation. By working together, we can help save countless lives and make America's roadways safer for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2010 as National Impaired Driving Prevention Month. I urge all Americans to make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–30802
Filed 12–6–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8611 of December 2, 2010

40th Anniversary of the Environmental Protection Agency

By the President of the United States of America

A Proclamation

From the air we breathe to the water we drink, the quality of our environment has a profound effect on our public health, the well-being of future generations, and the vitality of our economy. Just four decades ago, smog choked communities across America, pollution clotted numerous waterways, and our Nation watched in shock as Cleveland's Cuyahoga River ignited from a tragic accumulation of industrial waste and sewage. Americans realized that we must work together to preserve the beauty and utility of our planet, and we have come to expect clean air and drinking water.

The United States Environmental Protection Agency (EPA) was created in 1970 to protect Americans' health and our natural resources from pollution. Since its formation, EPA has responded to our Nation's most urgent environmental challenges, including industrial waste polluting our waters, acid rain poisoning our forests and lakes, the thinning of the ozone layer that shields the Earth, and safe handling of electronic waste. Throughout its history, EPA has been a champion for healthy families by reducing the environmental risks that affect children, fostering cleaner communities, and building a stronger America.

Looking to the future, we must safeguard the rich resources that have supported centuries of American growth and economic expansion, while also protecting the clean air and water that has helped keep our families healthy. To carry out these obligations, EPA will continue to make clean air, safe water, and unpolluted land a priority, and encourage America to be a leader in environmental protection through pollution prevention and the development of clean-energy alternatives to fossil fuels. The advances we make today will build a sustainable future for our country, creating new clean-energy jobs and laying the foundation for our long-term economic security.

Four decades after its creation, EPA is building on its legacy of responsible stewardship and advancing environmental quality in the face of new challenges. As we strive to protect the integrity of our planet in the 21st century, EPA continues to lead on critical global issues like reducing mercury pollution, fighting for environmental justice in overburdened communities, and confronting global climate change. The work of EPA benefits every American by making our environment safer and healthier while securing the path to a better future for our children and grandchildren.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2, 2010, as the 40th Anniversary of the United States Environmental Protection Agency. I call upon all Americans to observe this anniversary with appropriate programs, ceremonies, and activities that honor EPA's history, accomplishments, and contributions to our environment.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–30809
Filed 12–6–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Presidential Determination No. 2011–01 of October 6, 2010

Waiver of Restriction on Providing Funds to the Palestinian Authority

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7040(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Public Law 111–117), as carried forward by the Continuing Appropriations Act, 2011, as enacted September 30, 2010 (together, the "Act"), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 7040(a) of the Act, in order to provide funds appropriated to carry out Chapter 4 of Part II of the Foreign Assistance Act, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 7040(d) of the Act and to publish the determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 6, 2010

[FR Doc. 2010–30819
Filed 12–6–10; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2011–02 of October 8, 2010

Fiscal Year 2011 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the "Act") (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 80,000 refugees to the United States during Fiscal Year (FY) 2011 is justified by humanitarian concerns or is otherwise in the national interest; provided that this number shall be understood as including persons admitted to the United States during FY 2011 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 80,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided that the number of admissions allocated to the East Asia region shall include persons admitted to the United States during FY 2011 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members):

Africa	15,000
East Asia	19,000
Europe and Central Asia	2,000
Latin America/Caribbean	5,500
Near East/South Asia	35,500
Unallocated Reserve	3,000

The 3,000 unallocated refugee numbers shall be allocated to regional ceilings, as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated admissions in regions where the need for additional admissions arises.

Additionally, upon notification to the Judiciary Committees of the Congress, you are further authorized to transfer unused admissions allocated to a particular region to one or more other regions, if there is a need for greater admissions for the region or regions to which the admissions are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2602(b)(2)), as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

Consistent with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2011, the following persons may, if otherwise qualified, be considered

refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Cuba

b. Persons in the former Soviet Union

c. Persons in Iraq

d. In exceptional circumstances, persons identified by a United States Embassy in any location.

You are authorized and directed to report this determination to the Congress immediately and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 8, 2010

[FR Doc. 2010–30826
Filed 12–6–10; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2011–03 of October 15, 2010

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Brazil, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, October 15, 2010

[FR Doc. 2010–30827
Filed 12–6–10; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2011–04 of October 25, 2010

Presidential Determination With Respect To Section 404(c) of the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, pursuant to section 404(c) of the Child Soldiers Prevention Act of 2008 (CSPA), title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110 457), I hereby determine that it is in the national interest of the United States to waive the application to Chad, the Democratic Republic of the Congo, Sudan, and Yemen of the prohibition in section 404(a) of the CSPA.

You are authorized and directed to submit this determination to the Congress, along with the accompanying memorandum of justification, and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 25, 2010

Billing code 4710–10–P

MEMORANDUM OF JUSTIFICATION
REGARDING THE WAIVER OF RESTRICTIONS
PURSUANT TO THE CHILD SOLDIERS PREVENTION ACT OF 2008

Pursuant to section 404(c) of the Child Soldiers Prevention Act of 2008 (Title IV, Public Law 110-457) (the "CSPA"), the President has determined that it is in the national interest of the United States to waive the application to Chad, the Democratic Republic of the Congo, Sudan, and Yemen of the prohibition in section 404(a) of the CSPA. The justification for this determination with respect to each country is set forth in this memorandum.

Chad

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Chad of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: The United States Government is actively working with the Government of Chad and its national army to reduce and ultimately eliminate the army's recruitment of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. The United States Government will continue to emphasize the seriousness of this issue. CSPA restrictions would hinder the United States Government's effort to reinforce positive trends within the Chadian Government over the past year, such as a government-led, United Nations Children's Fund (UNICEF)-coordinated process that has made progress in demobilizing children within the ranks of the Chadian National Army.

The section 404(a) prohibition could also harm the cooperative relationship we currently hold with Chad in combating terrorism. Chad is a partner in the Trans-Sahara Counter Terrorism Partnership program and strongly supports counterterrorism objectives. Additionally, Chad plays a critical role in our humanitarian response to the crisis in Darfur, currently hosting 280,000 Sudanese refugees and cooperating with the United Nations Peacekeeping Operations in Chad and the Central African Republic. As part of this effort, Chad is tasked with providing

security to civilians and humanitarians in eastern Chad. The Government of Chad has worked with the U.S. Special Envoy to Sudan to encourage Sudanese rebel movements to commit to peace talks with the Government of Sudan.

Impact of Restriction: The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2011 International Military Education and Training (IMET) funds and Foreign Military Financing (FMF) funds. The harm to the long-term bilateral relationship would be disproportionately large relative to the amount of funding in question.

IMET programs are critical to influencing and training current and future Chadian military leaders. Fiscal 2011 IMET would include the following types of activities: Chadian attendance in junior officer professional military education, civil-military relations training, English language instructor training and materials, and noncommissioned officer professional military education. The FMF program for Chad includes funding programmed for C-130 spare parts, training, and technical manuals that are critical to support Chad's flying program. Chad currently flies a single, high flight time C-130 and has requested three KC-130Rs via section 516 of the Foreign Assistance Act of 1961 (excess defense articles) to provide Chad with the capability to support regional peacekeeping operations' airlift requirements.

Democratic Republic of the Congo

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to the Democratic Republic of the Congo of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: Imposing this prohibition on the Democratic Republic of the Congo by eliminating military education and training programs and defense reform-related programs would preclude the ability to deliver necessary defense reform services specifically cited for implementation in the U.S. Strategy for the Democratic Republic of the Congo, as well as jeopardize the United States' opportunity to positively influence the negative behavior patterns currently exhibited by the Armed Forces of the Democratic Republic of Congo (FARDC). IMET funding is helping professionalize the FARDC by providing training in English language, military justice, human rights, civil-military relations, rule of law, and defense resource management. The focus for FMF and IMET funding includes developing the capacity of the military as a non-political, professional force respectful of human rights, including a Rapid Reaction Force (RRF); supporting reform of the Congolese military in an effort to facilitate post-conflict transition, including capacity-building for regional stabilization operations; and building Democratic Republic of the Congo capacity for adequate military health care, including prevention, awareness, and treatment campaigns.

The United States Government is actively working with the Government of the Democratic Republic of the Congo and the FARDC to reduce and ultimately eliminate the incidence of the army's recruitment of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. Implementing the section 404(a) prohibition against the Democratic Republic of the Congo at this time would jeopardize the opportunity to influence the behavior we wish to change.

U.S. and Congolese representatives recently gathered at Kisangani to mark the establishment of a light infantry battalion intended to be a model unit for the future Congolese military. The train-and-equip mission, primarily funded out of

Peacekeeping Operations funds and part of a long-term, multilateral U.S.-Democratic Republic of the Congo partnership to promote security sector reform in the Democratic Republic of the Congo, will assist the Congolese Government in its ongoing efforts to transform the FARDC into a professional military force. The training is intended to increase the ability of the Congolese army to conduct effective internal security operations as part of the FARDC's rapid reaction plan, help preserve the territorial integrity of the Democratic Republic of the Congo, and develop an army that is accountable to the Congolese people. This initiative also represents one aspect of a long-term, multiagency, international approach to promote a sustainable peace through the creation of a model unit in the FARDC.

Impact of Restriction: The section 404(a) prohibition would impact the planned obligation of IMET and FMF funding currently requested for the Democratic Republic of the Congo. IMET programs are critical to the United States Government's ability to influence and train current and future military leaders in the Democratic Republic of the Congo. Fiscal Year 2011 IMET will include the following types of activities: Democratic Republic of the Congo attendance in junior officer professional military education, English language training and materials, and noncommissioned officer professional military education. FMF-funded programs for the Democratic Republic of the Congo include technical training, uniforms and personnel equipment, and wheeled vehicles, equipment, and training. This funding is critical to the Security Sector Reform and RRF efforts in the Democratic Republic of the Congo.

Sudan

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Sudan of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: The Government of Southern Sudan's army, the Sudan People's Liberation Army (SPLA), has committed to preventing recruitment of child soldiers and to demobilizing all children from its ranks. While there were no reports of active recruitment of children by the SPLA during the reporting period, approximately 1,200 children, both boys and girls between the ages of 12 and 17 years old, remained in the SPLA in December 2009. Some of these children serve as combatants, and others, including those under 15-years old, serve a variety of functions, including as guards, porters, and cooks. The SPLA has made progress in their demobilization, signing an action plan in November 2009 committing itself to end the use of child soldiers within a year's time and launching a Child Protection Unit to oversee its implementation. Curbing our ability to train the SPLA would significantly reduce our capacity to reinforce these positive trends and achieve our broader professionalization objectives. The United States Government is actively working with the Government of Southern Sudan and the SPLA to reduce and ultimately eliminate the incidence of the army's use of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance.

The end of the 21-year civil war in Sudan, as marked by the signing of the Comprehensive Peace Agreement (CPA) by the Government of Sudan and the Sudan People's Liberation Army in January 2005, signaled a new era for Sudan. The United States continues to work with the parties to implement the peace agreement and bring about democratic transformation in Sudan. While the signing of the Darfur Peace Agreement 3 years ago provided an opportunity to contribute toward the resolution of the crisis in Darfur, the conditions on the ground remain tenuous and the progress toward a bona fide peace process remains stalled. Under the CPA, we continue to implement a wide variety of programs to restore effective governance and allow economic growth in the South and other conflict areas. These include, but are not limited to, programs aimed at restoring a

functioning judicial system and other elements necessary for the return to the rule of law and security, a functioning legislature, elements of a market economy, mitigating conflict, and ensuring security, particularly by transforming the defense institutions and military forces of the Government of Southern Sudan to adequately provide security for itself and its people. To consolidate peace, it will be necessary to build security institutions in the defense and law enforcement sectors.

The President's waiver of the application of section 404(a) will allow these important efforts to continue as appropriate, thereby enhancing security within the country. IMET funding is a key tool used to assist with security sector reform, with the goals of conveying the values of democracy, fostering productive civil-military relations, and to transforming the Sudan Peoples' Liberation Army from a guerilla army to a more professional military force.

Impact of Restriction: Comprehensive foreign assistance restrictions and sanctions against Sudan are already in place, including those related to its designation as a state sponsor of terrorism. United States military assistance is focused upon the Government of Southern Sudan and relies upon waivers and other authorities from Congress to overcome restrictions otherwise applicable to Sudan.

CSPA restrictions would affect the planned obligation of Fiscal Year 2011 IMET funding currently requested for the Government of Southern Sudan/SPLA, which is critical to training current and future military leaders in Southern Sudan. Fiscal Year 2011 IMET will include the following types of activities: SPLA attendance in junior officer professional military education, civil-military relations training, English language training and materials, and noncommissioned officer professional military education. Prohibiting IMET funding for the Government of Southern Sudan/SPLA would preclude the ability to deliver critical training necessary to professionalize the SPLA, which is specifically cited for implementation in the United States Government's Sudan Strategy, which highlights those areas of national interest of the United States.

Yemen

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Yemen of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: Despite a 1991 law which stipulates that recruits to the armed forces must be at least 18 years of age, and assertions by the government that the military is in compliance with these laws, credible reports exist that children as young as 15 have been recruited into official government armed forces, including Yemen's national army, and used in direct hostilities against the Houthi rebels since the sixth round of the intermittent war in Sa'ada began in August 2009. In addition, there are documented cases of children as young as 14 who were recruited by tribal militias mobilized by the government to fight the Houthi rebels. A local nongovernmental organization estimated that children under the age of 18 may make up more than half of some tribes' armed forces, both those fighting with the government and those allied with the Houthi rebels.

The United States Government is working with the Yememi Government and military to reduce and eliminate incidences of children being recruited into the official government armed forces, as well as government-allied tribal militias. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. Imposing the section 404(a) prohibition against Yemen at this time would harm the cooperative relationship we have begun to rebuild with Yemen at a pivotal point in the fight against terrorism and have a negative impact on U.S. national security.

Yemen is a key partner in counterterrorism (CT) operations against al-Qa'ida in the Arabian Peninsula and cooperation with the Yemeni Government is a vital piece of the U.S. national strategy to disrupt, dismantle, and defeat terrorist organizations by denying them sanctuary in the ungoverned spaces of Yemen's hinterland. Cutting off assistance would seriously jeopardize the Yemeni Government's capability to conduct special operations and counterterrorism missions, and create a dangerous level of instability in the country and the region.

Impact of Restriction: The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2011 IMET funding and FMF funding. In addition, Yemen would not be eligible for section 1206 funding to improve its counterterrorism capabilities. The harm to the long-term bilateral relationship would be devastating, and overall capacity Government of Yemen to maintain security and conduct CT operations would be significantly hampered.

IMET programs are critical to the United States Government's ability to influence and train current and future Yemeni military leaders. . Fiscal Year 2011 IMET would include the following types of activities: Yemeni attendance in junior officer professional military education, civil-military relations training, and English language instructor training and materials.

The FMF program for Yemen includes funding programmed for C-130 spare parts, training, and technical manuals that are critical to support Yemen's tactical lift capability, spares, support for UH-1 helicopters, and bolstering Yemen's light lift/utility capability. Without FMF, the ability of Yemeni government forces to transport CT forces quickly throughout the country would substantially diminish. FMF is also programmed toward weapons and equipment for the Yemeni Special Operations Forces charged with hunting down al-Qa'ida. Further, FMF supports maritime security and interdiction capability (fast patrol boats, floating piers) with which the Yemeni Navy and Coast Guard can patrol and protect their coastline and ports.

[FR Doc. 2010–30828
Filed 12–6–10; 8:45 am]
Billing code 4710–10–C

Presidential Documents

Presidential Determination No. 2011–05 of November 19, 2010

Presidential Determination on Sudan

Memorandum for the Secretary of State [and the] President of the Export-Import Bank of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 908(a)(3) of the Trade Sanctions Reform and Export Enhancement Act of 2000, title IX, Public Law 106–387, as amended, 22 U.S.C. 7207(a)(3) (TSRA), I hereby determine it is in the national security interest of the United States to waive the application of section 908(a)(1) of TSRA to allow export assistance to be made available for the export of computers and related equipment that enables the United Nations to facilitate the referendum in Southern Sudan pursuant to the Comprehensive Peace Agreement.

The Secretary of State is hereby authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, November 19, 2010

[FR Doc. 2010–30831
Filed 12–6–10; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 75, No. 234

Tuesday, December 7, 2010

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 63

[Doc. No. AMS–LS–08–0064]

National Sheep Industry Improvement Center

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is affirming without changes, its interim rule to promulgate rules and regulations establishing a National Sheep Industry Improvement Center (NSIIC) program, consistent with the Food, Conservation, and Energy Act of 2008 (Farm Bill). This rule establishes the NSIIC and a Board of Directors (Board) that will manage and be responsible for the general supervision of the activities of the NSIIC, with oversight from the U.S. Department of Agriculture (USDA). The NSIIC is authorized to use funds to make grants to eligible entities in accordance with a strategic plan. No comments were received. Accordingly, AMS is issuing this final rule without changes.

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

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch; Telephone 202/720–1115; Fax to 202/720–1125; or e-mail to *Kenneth.Payne@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is published pursuant to 7 U.S.C.2008j as amended by section 11009 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). This section also affirms information contained in the interim rule concerning Executive Order 12866, Public Law 104–4, Executive Order 12988, Executive Order 13132, and the Regulatory Flexibility Act. Further, for this action, the Office of Management and Budget (OMB) has determined that this action is not significant under Executive Order 12866 and therefore has not been reviewed by OMB.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), AMS previously requested approval from OMB of a new information collection. In the interim rule, comments were requested on three forms concerning the Board nomination process. None were received. The information collection has been approved by OMB under OMB control number 0581–002.

Background Information

The NSIIC was initially authorized under the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 2008j). The Act, as amended, was passed as part of the 1996 Farm Bill (Pub. L. 104–127). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification or once the full appropriation of $50 million was disbursed. Subsequently, the NSIIC was privatized on September 30, 2006 (72 FR 28945).

In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), also known as the 2008 Farm Bill. Section 11009 of the 2008 Farm Bill repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC. Additionally, the 2008 Farm Bill provided for $1 million in mandatory funding for fiscal year (FY) 2008 from the Commodity Credit Corporation for the NSIIC to remain available until expended, as well as authorization for appropriations in the amount of $10 million for each of FY 2008 through FY 2012.

The authorizing legislation established in the U.S. Department of the Treasury (Treasury) the NSIIC Revolving Fund (Fund). The Fund is to be available to the NSIIC, without fiscal year limitation, to carry out the authorized programs and activities of the NSIIC. The law provides authority for amounts in the Fund to be used for direct loans, loan guarantees, cooperative agreements, equity interests, investments, repayable grants, and grants to eligible entities, either directly or through an intermediary, in accordance with a strategic plan submitted by the NSIIC to the Secretary. This rulemaking will establish the NSIIC and use of the Fund for making only grants to eligible entities.

The purpose of the NSIIC is to: (1) Promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) Optimize the use of available human capital and resources within the sheep or goat industries; (3) Provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) Advance activities that empower and build the capacity of the U.S. sheep or goat industry to design unique responses to the special needs of the sheep or goat industries on both a regional and national basis; and (5) Adopt flexible and innovative approaches to solving the long-term needs of the U.S. sheep or goat industry. The final rule authorizes a grant only program to be administered by the NSIIC Board.

Comments

On July 23, 2010, USDA published in the **Federal Register** (75 FR 43031) an interim rule with a request for comments to be received by September 21, 2010. USDA received no comments.

List of Subjects in 7 CFR Part 63

Administrative practice and procedure, Advertising, Lamb and lamb products, Goat and goat products, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

PART 63—NATIONAL SHEEP INDUSTRY IMPROVEMENT CENTER

■ Accordingly, the interim rule that added part 63 to chapter 1 of title 7, which was published on July 23, 2010 (75 FR 43031), is adopted as a final rule without change.

Dated: December 1, 2010.

David R. Shipman,

Acting Administrator.

[FR Doc. 2010–30534 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0845; Directorate Identifier 2010–CE–044–AD; Amendment 39–16534; AD 2010–25–01]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models DA 40 and DA 40F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires changing the emergency open doors procedure by incorporation of a temporary revision into the FAA-approved airplane flight manual (AFM) for all airplanes. This AD also requires replacement of the passenger door retaining bracket with an improved design retaining bracket for certain airplanes. This AD was prompted by several reports of the rear passenger door departing the airplane in flight. We are issuing this AD to change the emergency open doors procedure and retrofit the rear passenger door retaining bracket, which if not corrected could result in the rear passenger door departing the airplane in flight.

DATES: This AD is effective January 11, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 11, 2011.

ADDRESSES: For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on August 25, 2010 (75 FR 52292). That NPRM proposed to require a retrofit of the rear passenger door retaining bracket for certain airplanes. The NPRM also proposed to change the emergency open doors procedure by incorporation of a temporary revision into the FAA-approved AFM for all airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Shorten the Compliance Time

Robert Hasiak fully supported this AD action and stated that a door falling out of the sky over the general public is a safety hazard and that the sooner this is fixed, the safer we will be. We infer that the commenter wants us to shorten the compliance time from the proposed 6 months.

The FAA does not agree that 6 months is an unreasonable compliance time to address this situation. This 6-month compliance time is consistent with the service bulletin in that the time for compliance closely coincides with June 11, 2011 (the compliance time in the service bulletin). It also coincides with the appropriate risk level the FAA, the Austro Control Group (ACG), and European Aviation Safety Agency (EASA) agreed with. The FAA has determined that the actions of this AD and the compliance time address the unsafe condition in the interim until further analysis is done by Diamond Aircraft Industries GmbH (Diamond), EASA, and the FAA. We are not changing the AD based on this comment.

Request To Revise the Airplane Flight Manual Procedures

David Wood stated that the door departure while the aircraft is in flight happens when someone realizes the door is only being retained by the safety latch and then tries to close the door completely. This causes the safety latch to disengage and the door to depart the aircraft. The commenter suggests the following: "DO NOT TRY TO CLOSE THE DOOR ON TAKEOFF ROLL, CLIMB, CRUISE, DESCENT, OR UNTIL VERY SLOW LANDING ROLL." We infer that he wants the language added to the emergency open doors procedure in the AFM.

We agree with the commenter's assessment of the unsafe condition and the need to revise the emergency open doors procedure. However, we disagree on the suggested language. Diamond has issued Temporary Revision TR–MÄM 40–428, dated April 30, 2010. This revision changes the emergency open doors procedure to "Land at the next suitable airfield" when it is determined the rear door is unlocked. The revision also adds a warning to not attempt to lock the rear door in flight. The FAA has determined the action in this AD of adding the temporary revision to the AFM addresses the unsafe condition. We are not changing the AD based on this comment.

Request To Include the Model DA42

Villis Ositis of the Thielert Engine Owners Group commented that the Model DA 42 has the same door design and the same unsafe condition. He recommended that the AD also apply to the Model DA 42.

The FAA has discussed the potential of the rear door departing the Model DA 42 aircraft in flight with ACG, EASA, and Diamond. The FAA has determined the actions of this AD and the compliance time address the unsafe condition in the interim for the Model DA 40. Further analysis is being done for the Model DA 42. We may consider future rulemaking action on the Model DA 42 based on that analysis. We are not changing the AD based on this comment.

Request To Disconnect the Front Canopy Latch Sensor From the Door Open Indicator

Villis Ositis of the Thielert Engine Owners Group commented that the door open annunciation illuminates regardless whether it is the front canopy or the rear door that is not latched. The commenter states that since these aircraft do not have air conditioning it is common practice to taxi with the

canopy in the partially open setting, illuminating the door open annunciation. As a result, the pilot ignores the annunciation and is unaware that the rear door might not be properly latched. The commenter also states that passengers that have not been trained in the use of the doors may not be able to identify an incorrect latch position.

To correct the problem, the commenter suggests the wiring be modified to remove the front canopy latch sensor from the door open annunciation. In this proposed configuration the door open annunciation would only illuminate when the rear door was not properly latched and alert the pilot to the unsafe condition.

The FAA does not agree nor disagree with the proposed comment. Rather, the FAA is investigating this matter with ACG, EASA, and Diamond.

Diamond is now planning a design and flight test review to determine the overall safety issues with regard to this recommendation, which could take a few months to complete.

In the interim, the FAA has determined that the actions of this AD address the unsafe condition until further analysis is done. The FAA may consider further rulemaking action based on the evaluation. We are not changing the AD based on this comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 699 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the AFM (all airplanes)	.5 work-hour × $85 per hour = $42.50	Not Applicable	$42.50	$29,707.50
Retrofit the passenger door retaining bracket (428 airplanes).	2 work-hours × $85 per hour = $170.00	$75.00	245.00	104,860.00

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–25–01 Diamond Aircraft Industries GmbH: Amendment 39–16534; Docket No. FAA–2010–0845; Directorate Identifier 2010–CE–044–AD.

Effective Date

(a) This AD is effective January 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Diamond Aircraft Industries GmbH Models DA 40 and DA 40F airplanes, all serial numbers (S/N), that are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

Unsafe Condition

(e) This AD was prompted by several reports of the rear passenger door departing the airplane in flight. We are issuing this AD to change the emergency open doors procedure and retrofit the rear passenger door retaining bracket, which if not corrected could result in the rear passenger door departing the airplane in flight.

Compliance

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

Actions	Compliance	Procedures
(1) *For all S/N:* Incorporate Diamond Aircraft Temporary Revision TR–MÄM 40–428, page 3–37b, dated April 30, 2010, into the FAA-approved airplane flight manual.	Within 6 months after January 11, 2011 (the effective date of this AD).	Follow Diamond Aircraft Temporary Revision TR–MÄM 40–428, Cover Page, dated April 30, 2010.
(2) *For Model DA 40, S/N 40.006 through 40.009, 40.011 through 40.081, 40.084, and 40.201 through 40.749; and Model DA 40F S/N 40.FC001 through 40.FC009:* Replace the rear passenger door retaining bracket with an improved design retaining bracket.	Within 6 months after January 11, 2011 (the effective date of this AD).	Follow Diamond Aircraft Industries GmbH Mandatory Service Bulletin NO. MSB 40–070/NO. MSB D4–079/NO. MSB F4–024, dated April 30, 2010; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 40–070/WI–MSB D4–079/WI–MSB F4–024, dated April 30, 2010.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

Related Information

(h) For more information about this AD, contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.*

Material Incorporated by Reference

(i) You must use the service information contained in table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Diamond Aircraft Temporary Revision TR–MÄM 40–428, Cover Page and page 3–37b.	Not Applicable	April 30, 2010.
Diamond Aircraft Industries GmbH Mandatory Service Bulletin NO. MSB 40–070/NO. MSB D4–079/NO. MSB F4–024.	Not Applicable	April 30, 2010.
Diamond Aircraft Industries GmbH Work Instruction WI–MSB 40–070/WI–MSB D4–079/WI–MSB F4–024.	0	April 30, 2010.

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

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.*

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

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

Issued in Kansas City, Missouri, on November 23, 2010.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30199 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0850; Directorate Identifier 2010–NM–076–AD; Amendment 39–16536; AD 2010–25–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

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

ACTION: Final rule.

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

In accordance with design regulation, the THSA [trimmable horizontal stabilizer actuator] has a failsafe design. Its upper attachment to the aeroplane has two load paths, a Primary Load Path (PLP) and a Secondary Load Path (SLP), which is only engaged in case of PLP failure. Following the design intent, engagement of the SLP leads to jam the THSA, indicating the failure of the PLP.

Tests carried out under the loads-measured during representative flights have demonstrated that, when the SLP is engaged, it does not systematically jam the THSA. In

addition, laboratory tests have confirmed that the SLP will only withstand the loads for a limited period of time.

This condition of PLP failure during an extended period of time, if not detected and corrected, would lead to the rupture of the THSA upper attachment and consequent THSA loss of command, resulting in reduced control of the aeroplane.

* * * * *

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

DATES: This AD becomes effective January 11, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 11, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 27, 2010 (75 FR 52652). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In accordance with design regulation, the THSA [trimmable horizontal stabilizer actuator] has a failsafe design. Its upper attachment to the aeroplane has two load paths, a Primary Load Path (PLP) and a Secondary Load Path (SLP), which is only engaged in case of PLP failure. Following the design intent, engagement of the SLP leads to jam the THSA, indicating the failure of the PLP.

Tests carried out under the loads-measured during representative flights have demonstrated that, when the SLP is engaged, it does not systematically jam the THSA. In addition, laboratory tests have confirmed that the SLP will only withstand the loads for a limited period of time.

This condition of PLP failure during an extended period of time, if not detected and corrected, would lead to the rupture of the THSA upper attachment and consequent THSA loss of command, resulting in reduced control of the aeroplane.

For the reasons stated above, this [EASA] AD requires repetitive [detailed] inspections to detect if damage exists to the THSA upper attachment and if the SLP has been engaged and corrective actions, depending on findings.

The corrective actions include contacting Airbus for instructions and doing those instructions. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 5 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $850, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–25–03 Airbus: Amendment 39–16536. Docket No. FAA–2010–0850; Directorate Identifier 2010–NM–076–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, and B4–203 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

In accordance with design regulation, the THSA [trimmable horizontal stabilizer actuator] has a failsafe design. Its upper attachment to the aeroplane has two load paths, a Primary Load Path (PLP) and a Secondary Load Path (SLP), which is only engaged in case of PLP failure. Following the design intent, engagement of the SLP leads to jam the THSA, indicating the failure of the PLP.

Tests carried out under the loads-measured during representative flights have demonstrated that, when the SLP is engaged, it does not systematically jam the THSA. In addition, laboratory tests have confirmed that the SLP will only withstand the loads for a limited period of time.

This condition of PLP failure during an extended period of time, if not detected and corrected, would lead to the rupture of the THSA upper attachment and consequent THSA loss of command, resulting in reduced control of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Within 2,500 flight hours after the effective date of this AD, do a detailed visual inspection for metallic particles, cracks, scratches, and missing materials of the THSA upper attachment and screw shaft, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0203, dated June 8, 2009. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

(h) If during any inspection required by paragraph (g) of this AD, any metallic particle, crack, scratch, or missing material is found, before further flight, contact Airbus to obtain approved corrective action instructions, and accomplish those instructions accordingly.

(i) Doing the corrective actions specified in paragraph (h) of this AD is not a terminating action for the repetitive inspections required by paragraph (g) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(k) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0019, dated February 5, 2010; and Airbus Mandatory Service Bulletin A300–27–0203, dated June 8, 2009; for related information.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A300–27–0203, excluding Appendix 01, dated June 8, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on October 22, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30309 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0934; Directorate Identifier 2008–NM–113–AD; Amendment 39–16537; AD 2010–25–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–9–30, DC–9–40, and DC–9–50 Series Airplanes, Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes, and Model MD–88 and MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the McDonnell Douglas Corporation airplanes listed above. This AD requires modifying the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible sources of ignition in a fuel tank caused by an electrical fault in the fuel boost pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

DATES: This AD is effective January 11, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 11, 2011.

ADDRESSES: For Boeing service information identified in this AD,

contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For Argo-Tech service information identified in this AD, contact Argo-Tech Corporation, 23555 Euclid Avenue, Cleveland, Ohio 44117; telephone 216–692–6000.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model DC–9–30, DC–9–40, and DC–9–50 series airplanes, Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 and MD–90–30 airplanes. That NPRM was published in the **Federal Register** on August 29, 2008 (73 FR 50894). That NPRM proposed to require modifying the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks.

Relevant Service Information

We have reviewed Boeing Service Bulletins DC9–28–212 (for Model DC–9–30, DC–9–40, and DC–9–50 series airplanes, and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes) and MD90–28–010 (for Model MD–90–30 airplanes), both Revision 1, both dated June 16, 2009. Revision 1 of the Boeing service information makes minor updates and specifies that no additional work is necessary on airplanes changed in accordance with Boeing Service Bulletin DC9–28–212 or MD90–28–010, both dated February 22, 2008 (referred to in the proposed AD as the appropriate sources of service information for accomplishing the modification).

Boeing Service Bulletins DC9–28–212 and MD90–28–010, both Revision 1, both dated June 16, 2009, recommend concurrent accomplishment of the modification specified in Argo-Tech Service Bulletin 398000–28–2, Revision 1, dated December 2, 2008. Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, was referred to in the proposed AD as the appropriate source of service information for accomplishing a concurrent modification of the fuel boost pumps.

We have revised paragraphs (c), (g), and (h) of this AD to reference Revision 1 of the applicable Boeing and Argo-Tech service information. We have also added a new paragraph (i) to this AD (and reidentified subsequent paragraphs) to give credit for actions done in accordance with the original issues of the Boeing and Argo-Tech service information.

Comments

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

Request for Alternative Method of Compliance (AMOC)

American Airlines (AA) asks that we revise the modification requirements in the NPRM, and in lieu of the modification, a one-time inspection of each affected fuel boost pump be mandated to ensure that the stator lead wire is of proper length and positioned away from the pump rotor/shaft assembly. AA states that after operating the affected airplanes for over 24 years with over 75,000,000 flight hours in service, it has not found any chafing of the fuel pump lead wire during shop teardown.

We do not agree with the commenter's request. We have determined that a one-time inspection of the wiring leads would not be effective at preventing a single failure within the pump from creating an ignition source. Argo-Tech, the original equipment manufacturer (OEM), has reported two instances of lead wire contact with the rotor assembly, which could have resulted in chafing and energized rotor assembly. Therefore, the data provided by this commenter does not support the request to utilize one-time inspections in lieu of the modifications required by this AD. We have not changed the AD in this regard.

Request for Risk Assessment

The Air Transport Association (ATA) on behalf of its member AA recommends that we update our risk assessment in view of service data provided in the AA comments, in addition to the current fleet size and remaining service lives of the affected airplanes. ATA also suggests correcting the deficiencies noted in the service instructions (specified under 'Request to Revise Argo-Tech Service Information') and publishing a supplemental NPRM after those discrepancies are corrected.

AA asks that prior to issuing the AD we accomplish a risk assessment regarding fuel tank system safety that takes into account the number of Model DC–9, MD–80 and MD–90 airplanes estimated to be operating within the compliance times required by the AD. AA also asks for the projected operational life of these airplanes after the AD compliance date and wants the results of this risk assessment reported to Boeing and affected operators. AA states that, when the FAA evaluated these design reviews, it established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. AA adds that the percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria; the other three criteria address the failure types under evaluation. AA notes that the evaluation apparently did not take into consideration the number of Model DC–9, MD–80 and MD–90 airplanes in operation.

We disagree with the commenters' request. Special Federal Aviation Regulation 88 (SFAR 88) resulted in design approval holder (DAH) evaluation of the fuel tank system design and identification of failures within the fuel tank system that could result in ignition sources. We evaluated the analyses provided by the DAH and determined that foreseeable single failures of the fuel pump could result in an ignition source. As a result, we determined that mandatory corrective action is needed to correct single failures that could result in an ignition source. SFAR 88—Mandatory Action Decision Criteria Memorandum, dated February 25, 2003, specifies SFAR 88 AD determination is based on unsafe condition evaluation criteria, including single failures that can result in a catastrophic failure. We have made no change to the AD in this regard.

Request To Change NPRM Requirements

ATA, on behalf of its member AA, requests that we do not require a design change that is a reliability enhancement. AA requests that the NPRM requirement to replace the current pump connectors with gold-plated connector pins, as specified in the applicable service bulletins and NPRM, be changed. AA states that installation of gold-plated connector pins is not an SFAR 88-related design change intended for preventing an ignition source. AA adds that the installation of gold-plated pins is intended to improve the reliability of the connector interface. AA also notes that the cost to install gold-plated pins is $1,352 per pump.

We acknowledge the commenter's concern and provide the following clarification. This AD does not require using gold-plated connector pins to install the pumps, although the Argo-Tech service information recommends installing the new pump assembly electrical connector using gold-plated connector pins; the accomplishment instructions do not specify that only gold-plated connector pins must be installed. Installation of gold-plated pins is a reliability improvement and is not identified as a design change solution to mitigate ignition source caused by an energized rotor assembly. Energized rotor assembly could result from chafing of fuel pump internal lead wires to the rotor assembly; therefore, we are not mandating the installation of gold-plated connector pins. We have made no change to the AD in this regard.

Request To Identify Additional Guidance

AA asks that the NPRM refer to FAA Advisory Circular (AC) 20–62D, dated May 24, 1996, as guidance for acceptable, equivalent consumable materials and parts for use during modification of the fuel boost pumps in accordance with 14 CFR 43.13(c). AA states that the procedures in Argo-Tech Service Bulletin 398000–28–2 do not allow operators to use such materials. AA notes that in some cases it does not stock certain adhesives, conversion coatings, sealants, etc., due to supplier delivery issues, the identification of improved products, standardization efforts, and health and/or environmental issues. AA adds that it has identified acceptable, equivalent materials that meet or exceed the performance of the original materials; operation of the fleet depends on identifying and utilizing acceptable, equivalent materials for airplane maintenance. AA concludes that AC 20–62D provides information and guidance for use in determining the quality, eligibility, and traceability of aeronautical parts and materials intended for installation on U.S. type-certificated products and to enable compliance with the applicable regulations. AA notes that this AC does not exclude ADs or other regulatory actions from its applicability, and contends that the guidance in this AC is applicable to the NPRM.

Although it is true that FAA AC 20–62D, dated May 24, 1996, in general applies to owner/operator maintenance and repair practices in use prior to issuance of SFAR 88, we do not agree that this AD should refer to AC 20–62D as guidance. During development of SFAR 88 we received reports of ignition sources being created by lack of control of past maintenance and overhaul practices. We included a requirement that critical design configuration control limitation be defined by the DAH so that doing maintenance or overhaul would not inadvertently bypass safety critical design features of the fuel tank system. We have determined that past maintenance practices for fuel systems using the guidelines of AC 20–62D are not applicable to the fuel system type design changes mandated by SFAR 88. The requirements of this AD take precedence over the guidelines of AC 20–62D. The commenter suggested it has identified "acceptable equivalent materials that that meet or exceed the performance of the original materials." The commenter must request AMOC approvals from the FAA for these materials. Therefore, we have made no change to the AD in this regard.

Request To Revise Argo-Tech Service Information

AA asks that we direct Argo-Tech to revise Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, to include the following specific tolerances to avoid potential AD enforcement issues for AA and other operators.

- Include an appropriate minimum radius for the noted dimension in Figure 1, "Machining Mask," of that Argo-Tech service bulletin. AA notes that it does not have a tolerance call-out on the 1.25 diameter drill or cut-through dimension.
- Include an appropriate minimum radius in Figure 2, "Housing Machine Details," of that Argo-Tech service bulletin. AA notes that it does not have a minimum dimension for the "R 0.010 Max" radius dimension. AA adds that some amount of radius (greater than R 0.000) is necessary at the locations shown; therefore the minimum radius should be specified.
- Include an appropriate maximum dimension in Step 3.D.16 of that Argo-Tech service bulletin which specifies "Etch wire insulation of 4 stator lead wires and ground lead wire ends a minimum of 0.75 inch (19 mm) using Teflon etchant (Tetra-Etch)." AA infers that there is a corresponding maximum dimension for this task.
- Correct and clarify Step 3.D.17 of that Argo-Tech service bulletin, which specifies "Strip 0.25 +/− 0.625 inch." AA notes that the tolerance for this dimension is greater than the nominal dimension. AA adds that it is not common practice to have .XXX tolerance on .XX dimension.
- Include appropriate dimension for Step 3.D.19 of that Argo-Tech service bulletin which specifies "1 inch (25 mm) maximum exposed lead wire length permissible at connector end after potting." AA infers that there is a corresponding minimum dimension to adhere to for this task.
- Include an appropriate tolerance for Step 3.D.21 of that Argo-Tech service bulletin which specifies "Lead wires must exit potting cup at 45 degree angle." AA requests the following additional changes:
- Allow "industry accepted" alternative methods of compliance for part reidentification (including vibro-etch, if acceptable) and permanent marker (Sharpie). AA notes that Step 3.D.31 of that Argo-Tech service bulletin specifies "Ink stamp new stator and housing assembly part number (219980–1) on stator and housing assembly." AA adds that many repair stations and operators (including AA) do not reidentify parts using ink stamps; an ink stamp identification process would typically be used by a type certificate holder (TCH) or OEM, but not by an operator. AA states that there are many acceptable "industry standard" methods for reidentification of parts, including vibro-etch (for "non-fatigue" critical parts) and permanent marker (Sharpie).
- Remove the type of material specified on page 5, paragraph C.(2) of that Argo-Tech service bulletin, "Parts and Material Supplied by the Operator" which references "Primer, Yellow, Zinc Chromate, P/N TT–P–1757." AA notes that the reference to this material should be removed because it is not called out in the Accomplishment Instructions of that Argo-Tech service bulletin. AA adds that this material is called out in the component maintenance manual (CMM 28–20–6), but only for protecting pins used in the Volute assembly, which is not affected by the NPRM. AA states that this product is a known carcinogen and many operators (including AA) and

repair stations have removed it from inventory.

We acknowledge the inconsistencies in Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, as noted above by the commenter. As specified under "Explanation of Relevant Service Information," above, Argo-Tech has revised the subject service bulletin to provide clarification and address all of the inconsistencies noted. We have revised this AD to refer to the revised Argo-Tech service bulletin.

AA also requests that there be a change in the language in Step 3.D.18 of Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, which specifies "Solder leads to receptacle connector (50) per MIL–STD–2000 * * *" to read "Solder leads to receptacle connector (50) per MIL–STD–2000 (or equivalent procedure)." AA notes that in some cases it utilizes internal process specifications to accomplish the equivalent of industry standard processes. AA adds that its Material and Process Specification P17–1 STD–2000 provides soldering processes equivalent to MIL–STD–2000.

We do not agree that the language in Step 3.D.18 of that Argo-Tech service bulletin should be changed. The process specified reflects the pump design standard as qualified by Boeing and Argo-Tech, and certified by the FAA in accordance with Boeing compliance data. In addition, the process is CDCCL controlled in the associated fuel pump component maintenance manual. Argo-Tech has revised Argo-Tech Service Bulletin 398000–28–2 to provide clarification for the language in Step 3.D.18 of that service bulletin.

In addition, AA points out that page 5, paragraph C.(2) of that Argo-Tech service bulletin specifies in "Parts and Material Supplied by the Operator" under "Curing Agent, Epoxy Resin, P/N Versamid 125" that "EPI–CURE–3125" is equivalent to "Versamid 125." AA notes that the specified curing agent is no longer procurable under the name "Versamid 125," and according to its purchasing department "EPI–CURE 3125" is the same product. AA asks that this clarification be included.

We do not agree that the requested clarification should be included in that Argo-Tech service bulletin. Argo-Tech continues to use and procure Versamid 125, which is also a CDCCL-controlled consumable in the associated fuel pump component maintenance manual. We have made no change to the AD in this regard.

Request To Revise Boeing Service Information

AA asks that we direct Boeing to revise Boeing Service Bulletins DC9–28–212 and MD90–28–010, both dated February 22, 2008, to accurately depict the physical boundaries of the center wing tank. AA states that page 7 of Boeing Service Bulletin DC9–28–212 illustrates a typical "twinjet" airplane and shows the correct locations of the forward and aft auxiliary tanks for Model DC–9 and MD–80 airplanes. AA notes that the center wing tank is not illustrated properly because the drawing points to what appears to be a small access panel on the right wing. AA adds that past experience indicates that service bulletin illustrations can often be inconsistent with the configuration of the actual airplanes, engines, or components. AA indicates that this issue was found during an FAA audit of ADs on Model MD–80 fleet in April 2008; the findings indicated that some of the illustrations used to conduct the audit did not accurately reflect the production or post-production configuration of the airplane affected by the AD.

We do not agree with the commenter. As specified under "Explanation of Relevant Service Information," above, Boeing has revised the Boeing service bulletins referred to in the NPRM. However, per the Boeing type design and maintenance manual data, the center wing tank pumps and access door are located on the right wing, not the left, as inferred by the commenter. Therefore, we have made no change to the AD in this regard.

Request To Revise Certain Sections in the Argo-Tech Service Information

AA asks that we direct Argo-Tech to revise the illustrations in the figures depicted in the stator and housing assembly modification procedure in Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, to include the following note:

> **Note:** The configuration illustrated in this figure is for reference only, and may vary from the operator's configuration. Any discrepancies between the illustration and the operator's configuration do not necessarily constitute non-compliance with the requirements of this SB.

AA adds that past experience indicates that service bulletin illustrations can often be inconsistent with the configuration of the actual airplane, engine, or components. AA notes that this issue was brought to light during an FAA audit of ADs on the Model MD–80 fleet in April 2008; the findings indicated that some of the illustrations used to conduct the audit did not accurately reflect the production or post-production configuration of the airplane affected by the AD. AA adds that the FAA claimed these discrepancies were findings of non-compliance.

We do not agree with the commenter. The figures included in that Argo-Tech service bulletin reflect the pump design standard qualified by Boeing and Argo-Tech and certified by the FAA in accordance with Boeing compliance data. A review of that Argo-Tech service bulletin shows that none of the figures contain "reference only" information; therefore, it would not be consistent to label some parts of the figures and not others. Including a "reference only" note may allow an obvious part discrepancy to escape further scrutiny. Therefore, we have made no change to the AD in this regard.

AA also asks that we direct Argo-Tech to revise Figure 2 ["Housing Machining Details"] of that Argo-Tech service bulletin, to include the following note regarding deviations:

> **Note:** Deviations to the requirements of Argo-Tech SB 398000–28–2 that are reviewed and approved in writing by Argo-Tech are considered FAA-approved Alternative Means of Compliance (AMOCs) to the requirements of this AD.

AA states that, Figure 2 includes specific machining dimensions for the housing; during the process of machining and inspecting parts in its shops, it occasionally finds discrepancies between the dimensional specifications contained in the repair or modification procedures and the actual measured dimensions on the part. AA adds that in these cases, it contacts the TCH or the OEM, as applicable, to request and obtain technical concurrence to deviate from dimensional specifications. AA notes that since that Argo-Tech service bulletin is a subject of the NPRM, it would also need to request and obtain an AMOC approval for this deviation. AA concludes that if the published AD has provisions to allow the OEM to review, disposition, and approve minor deviations to the dimensional specifications contained in that Argo-Tech service bulletin, it would alleviate the need for operators to request individual AMOC approvals from the FAA for these deviations.

We do not agree with the commenter. Dimensional tolerances, as provided by the OEM, must be maintained to make sure a part is within the design specification limits and is maintained and operated in accordance with the instructions for continued airworthiness

(ICA) of the certificated product. Any deviations must be reviewed and approved; therefore, we can not pre-approve an AMOC procedure for addressing all future unforeseeable quality issues in any AD. We have made no change to the AD in this regard.

Request To Include Revisions to Component Maintenance Manual (CMM)

AA asks that we direct Argo-Tech to revise any references to CMM 28–20–6 to include "Revision 6," which is the mandated revision level specified in related rulemaking (AD 2008–11–15). AA states that paragraphs 1.K.1 and L. of Argo-Tech Service Bulletin 398000–28–2, dated November 8, 2007, list "Component Maintenance Manual 28–20–6" with no revision level specified, and there are several references to "CMM" in paragraph 3., "Accomplishment Instructions," with no revision level specified. AA adds that, to ensure consistency and strict legal compliance in regard to work accomplished on the subject fuel boost pumps (and volutes), that Argo-Tech service bulletin should specify that all work be done in accordance with CMM 28–20–6, Revision 6.

We do not agree with the commenter. The CMM revision level is not specified in that Argo-Tech service bulletin since the special compliance item (SCI) is the controlling critical design configuration control limitation (CDCCL) definition document, so the need for AMOCs related to CMM revisions is not an issue. The compliance time in this AD is 5 years, and the CMM could be revised several times during that period. Specifying the CMM revision level in Argo-Tech Service Bulletin 398000–28–2 would necessitate revising both the Argo-Tech and Boeing service bulletins after every revision of the CMM, which would require operators to request an AMOC for each Boeing service bulletin revision. In light of these facts, we have made no change to the AD.

Request To Clarify Certain Actions in Paragraph (g)

Northwest Airlines (NWA) agrees with the intent of the NPRM. NWA asks that we include a clarification in paragraph (f) of the NPRM that excludes post-production removal of an auxiliary fuel tank to release operators from doing actions in the Boeing service information that no longer apply. NWA states that this would prevent the need for an AMOC request.

We agree with the commenter. The actions required by paragraph (g) of this AD (referred to as paragraph (f) in the NPRM) do not apply to certain airplanes; therefore, we have clarified the language in paragraph (g) to specify that, for airplanes on which the auxiliary fuel tanks have been removed, the actions do not apply.

Request To Clarify Unsafe Condition

Boeing asks that we clarify the description of the unsafe condition to note that the potential fuel tank ignition source, an energized fuel pump rotor assembly, is not caused by uncommanded or dry operation of the fuel boost pumps. Boeing states that uncommanded running of a fuel pump results from failures in its command and control electrical circuit and does not contribute to development of an energized rotor assembly condition. Boeing adds that a fuel pump inlet exposed to the ullage (dry operation of a fuel pump) is a necessary condition for propagation of an ignition source into the fuel tank, but does not contribute to development of an energized rotor assembly condition.

We agree with the commenter for the reasons provided. We have changed the description of the unsafe condition accordingly.

Request To Revise Costs of Compliance Section

AA asks that we incorporate more accurate labor estimates. AA states that for Group 1, Configurations 1 and 2, the NPRM specifies 1 work hour for a total cost per product of between $1,550 and $16,118. AA notes that the cost impact estimates do not take into account the cost to accomplish the modification in the shop. AA adds that for those airplanes the estimate should be 9 work hours at an average rate of $90 per work hour; for a total cost of $2,385 and $2,940 for parts per MD–82 airplane. Total labor and parts cost would be $5,325 per MD–82 airplane. AA concludes that the total fleet cost would be $1,262,025.

AA also states that for Group 3, Configurations 1 and 2, the NPRM specifies 3 work hours for a total cost per product of between $1,710 and $16,278. AA notes that the cost impact estimates do not take into account the cost to accomplish the modification in the shop. AA adds that for those airplanes the estimate should be 27 work hours at an average labor rate of $90 per work hour, for a total cost of $2,430 and $8,820 for parts per MD–83 airplane. AA concludes that the total fleet cost would be $1,035,000.

After considering the data presented by commenter, we agree that the number of work hours required is higher than our previous estimate, although not as high as provided by the commenter. Depending on operator's capabilities to change (modify and reinstall) a pump we have provided two estimates; a minimum and a maximum cost per airplane. The minimum cost represents the cost for operators who have repair shop resources and the capability to modify a pump and reinstall it. The maximum cost represents the cost for operators who choose to replace the pump with an OEM pump. The total labor hours to change (modify and reinstall) a pump by operators is approximately 7 hours. The total labor hours for replacing a pump with an OEM pump is approximately 3 hours. Depending on airplane grouping, there may be a minimum of 2 pumps or as many as 6 pumps per airplane. The cost impact information, below, has been revised to add a second table to indicate this higher amount.

Explanation of Change to Applicability

We have changed the applicability in this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Additional Paragraph in the AD

We have added a new paragraph (e) to this AD to provide the Air Transport Association (ATA) of America subject code 28; Fuel. This code is added to make this AD parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

Conclusion

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

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this AD affects 804 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with the modification specified in this AD.

ESTIMATED COSTS

Airplane group—number of pumps	Configuration	Work hours	Average labor rate per hour	Parts	Cost per product
Group 1—2 pumps	1	7 per pump	$85	Between $1,470 and $7,600 ...	Between $4,130 and $16,390.
Group 1—2 pumps	2	3 per pump	85	$16,038 (per new pump)	$32,586.
Group 3—6 pumps	1	7 per pump	85	Between $1,470 and $7,600 ...	Between $12,390 and $49,170.
Group 3—6 pumps	2	3 per pump	85	$16,038 (per new pump)	$97,758.

* **Note:** For Group 2, 4, 5, 6, and 7 airplanes, the costs are calculated by the number of pumps per airplane; the range in the table above includes the fewest to the greatest number of pumps per airplane. Group 2, 4, 5, 6, and 7 airplanes are included in that range.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–25–04 McDonnell Douglas Corporation: Amendment 39–16537. Docket No. FAA–2008–0934; Directorate Identifier 2008–NM–113–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes; certificated in any category; as identified in Boeing Service Bulletins DC9–28–212 and MD90–28–010, both Revision 1, both dated June 16, 2009.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible sources of ignition in a fuel tank caused by an electrical fault in the fuel boost pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane.

Subject

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

Compliance

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

Modification

(g) Within 60 months after the effective date of this AD: Modify the fuel boost pumps for the center wing, and forward or aft auxiliary fuel tanks, as applicable, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletins DC9–28–212 (for Model DC–9–30, DC–9–40, and DC–9–50 series airplanes); and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes) and MD90–28–010 (for Model MD–90–30 airplanes), both Revision 1, both dated June 16, 2009. For airplanes on which the auxiliary fuel tanks have been removed before the effective date of this AD, the actions for the auxiliary fuel tanks specified in this paragraph are not required.

Prior or Concurrent Action

(h) Prior to or concurrently with accomplishing the modification required by paragraph (g) of this AD: Do the modification specified in Argo-Tech Service Bulletin 398000–28–2, Revision 1, dated December 2, 2008.

Credit for Actions Done In Accordance With Previous Issue of the Service Information

(i) Actions done before the effective date of this AD in accordance with the service information identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Document	Date
Argo-Tech Service Bulletin 398000–28–2	November 8, 2007.

TABLE 1—CREDIT SERVICE INFORMATION—Continued

Document	Date
Boeing Service Bulletin DC9–28–212	February 22, 2008.
Boeing Service Bulletin MD90–28–010	February 22, 2008.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

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

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Argo-Tech Service Bulletin 398000–28–2	1	December 2, 2008.
Boeing Service Bulletin DC9–28–212	1	June 16, 2009.
Boeing Service Bulletin MD90–28–010	1	June 16, 2009.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For Argo-Tech service information identified in this AD, contact Argo-Tech Corporation, 23555 Euclid Avenue, Cleveland, Ohio 44117; telephone 216–692–6000.

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

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

Issued in Renton, Washington, on November 24, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30518 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD; Amendment 39–16526; AD 2010–24–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111 and A318–112 Airplanes and Model A319, A320, and A321 Series Airplanes

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

ACTION: Final rule.

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

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

* * * * *

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

DATES: This AD becomes effective January 11, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 11, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products.

That supplemental NPRM was published in the **Federal Register** on August 4, 2010 (75 FR 46873). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.
>
> In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.
>
> For the reasons described above, EASA AD 2007–0276 was issued to require repetitive [detailed] inspection of the lower lateral 80VU fittings for damage and [repetitive detailed] inspection of the lower central 80VU support for damage and cracking, and the accomplishment of associated corrective actions, depending on findings.
>
> Since AD 2007–0276 was issued, Airbus introduced a new reinforced lower central support for the 80VU.
>
> This [EASA] AD has been revised to introduce the new reinforced lower central support as an optional terminating action to the repetitive inspections.
>
> * * * * *

The associated corrective actions include repair or replacement of the lower lateral fittings and/or replacement of the lower central support. Modifying the 80VU lower lateral fittings (the modification includes replacing the 80VU lower lateral fittings) eliminates the need for the repetitive inspection of the lower lateral fittings. Replacing the 80VU lower central support (*i.e.,* replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting) eliminates the need for the repetitive inspection of the lower central support. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Allow Credit for Actions Done per Previous Service Bulletin

Lufthansa stated that paragraph (g) of the NPRM specifies that doing a modification in accordance with Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008, terminates the inspections of the lateral fittings. The commenter stated this is not correct because any revision of the service bulletin terminates the inspections.

We infer that Lufthansa requests that we revise paragraph (g) of the final rule to allow credit for actions done in accordance with previous issues of Airbus Service Bulletin A320–25–1557. We agree that previous issues are acceptable; however, it is not necessary to revise paragraph (g) of the final rule. We give credit for doing actions in accordance with previous revisions of the service information in paragraph (l) of the final rule. We have not changed this AD in this regard.

Request To Defer Corrective Actions

Lufthansa requested that we allow operators to defer doing the replacement specified in paragraph (j) of the NPRM. The commenter noted that Airbus Service Bulletin A320–53–1215, dated November 5, 2008, and EASA AD 2007–0276R1, dated March 18, 2010, both allow deferring the replacement. The commenter also noted that exhaustive data on cracks and crack growth are available on request.

We disagree with the request to allow deferring the replacement required by paragraph (j) of the final rule. Our policy specifies the requirement to repair known cracks before further flight (though we might make exceptions to this policy in certain cases of unusual need). This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is made. We consider the compliance times in this AD to be adequate to allow operators to acquire parts to have on hand in the event that a crack is detected during inspection. Therefore, we have determined that, due to the safety implications and consequences associated with such cracking, any subject 80VU rack lower central support that is found to be cracked must have associated corrective actions done before further flight. However, under the provisions of paragraph (m) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Allow Alternate Actions in Lieu of the Replacement in Paragraph (j) of the NPRM

Lufthansa further requested that we allow alternative actions other than doing a replacement in accordance with Airbus Service Bulletin A320–53–1215, dated November 5, 2008, as specified in paragraph (j) of the NPRM. The commenter stated that Airbus Service Bulletin A320–53–1215, dated November 5, 2008, and EASA AD 2007–0276R1, dated March 18, 2010, both specify repairing or replacing the pyramid fitting in accordance with Airbus Service Bulletin A320–25A1555, dated June 14, 2007; or Airbus Service Bulletin A320–25–1557, dated June 14, 2007; as applicable. The commenter stated that allowing only the replacement in accordance with Airbus Service Bulletin A320–53–1215, dated November 5, 2008, is more restrictive to operators than necessary for continued flight safety.

We disagree with the request to allow actions other than the replacement required by paragraph (j) of this AD. Doing the repair or replacement of the pyramid fitting in accordance with Airbus Service Bulletin A320–25A1555, dated June 14, 2007; or Airbus Service Bulletin A320–25–1557, dated June 14, 2007; as applicable; would require also doing repetitive inspections. We can better ensure long-term continued operational safety by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections might not provide the degree of safety necessary for the transport airplane fleet. This determination, along with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. The replacement required by paragraph (j) of the final rule is consistent with these conditions. However, under the provisions of paragraph (m) of the final rule, we will consider requests for alternative methods of compliance if sufficient data are submitted to substantiate that the alternative actions would provide an acceptable level of safety. We have not changed this AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI

to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD affects 678 products of U.S. registry. We also estimate that takes about 82 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost about $2,592 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,483,036, or $9,562 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–24–07 Airbus: Amendment 39–16526. Docket No. FAA–2008–0670; Directorate Identifier 2007–NM–339–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes, certificated in any category, all manufacturer serial numbers, except airplanes on which Airbus Modification 34804 has been embodied in production or on which Airbus Service Bulletins A320–25–1557 and A320–53–1215 have been done in service.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings, and Code 53: Fuselage.

Reason

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

Damage to the lower lateral fittings of the 80VU rack, typically elongated holes, migrated bushes [bushings], and/or missing bolts have been reported in-service. In addition damage to the lower central support fitting (including cracking) has been reported.

In the worst case scenario a complete failure of the 80VU fittings in combination with a high load factor or strong vibration could lead to failure of the rack structure and/or computers or rupture/disconnection of the cable harnesses to one or more computers located in the 80VU. This rack contains computers for Flight Controls, Communication and Radio-navigation. These functions are duplicated across other racks but during critical phases of flight the multiple system failures/re-configuration may constitute an unsafe condition.

* * * * *

Compliance

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

Repetitive Inspections of the 80V Rack Lower Lateral Fittings

(g) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower lateral fittings for damage (*e.g.,* broken fitting, missing bolts, migrated bushings, material burr, or rack in contact with the fitting) of the 80VU rack lower lateral fittings, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008. Repeat the inspection thereafter at the interval specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Modifying the 80VU lower lateral fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008, terminates the inspection requirements of this paragraph.

(1) For airplanes on which the 80VU rack lower lateral fittings have not been replaced in accordance with the Airbus Mandatory Service Bulletin A320–25A1555: Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

(2) For airplanes on which the 80VU rack lower lateral fittings have been replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555: Do the next inspection within 24,000 flight cycles after doing the replacement and repeat the

inspection thereafter at intervals not to exceed 4,500 flight cycles.

(h) If any damage is found during any inspection required by paragraph (g) of this AD, do all applicable corrective actions (inspection and/or repair) in accordance with the Accomplishment Instructions and timeframes given in Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008.

Repetitive Inspections of the 80V Rack Lower Central Support

(i) Prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a special detailed inspection of the 80VU rack lower central support for cracking, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25A1555, Revision 02, dated November 5, 2008. Repeat the inspection thereafter at the interval specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008, terminates the inspection requirements of this paragraph.

(1) For airplanes on which the 80VU rack lower central support has not been repaired or replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555 or Airbus Service Bulletin A320–25–1557: Repeat the inspection thereafter at the interval specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable.

(i) For airplanes on which the lower central support has accumulated 30,000 total flight cycles or more: At intervals not to exceed 500 flight cycles.

(ii) For airplanes on which the lower central support has accumulated less than 30,000 total flight cycles: At intervals not to exceed 4,500 flight cycles, without exceeding 30,750 total flight cycles on the support for the first repetitive inspection.

(2) For airplanes on which the 80VU rack lower central support has been repaired or replaced in accordance with Airbus Mandatory Service Bulletin A320–25A1555 or Airbus Service Bulletin A320–25–1557: Do the next inspection within 24,000 flight cycles after the repair or replacement and thereafter repeat the inspection at the interval specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, as applicable.

(j) If any crack is found during any inspection required by paragraph (i) of this AD, before further flight, replace the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008. Doing this replacement terminates the inspection requirements of paragraph (i) of this AD.

Optional Terminating Action

(k) Doing the actions specified in paragraphs (k)(1) and (k)(2) of this AD terminates the requirements of paragraphs (g) and (i) of this AD.

(1) Replacing the pyramid fitting on the 80VU rack with a new, reinforced fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

(2) Modifying the 80VU lower lateral fittings, in accordance with Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions done before the effective date of this AD in accordance with the service information identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1—PREVIOUS REVISIONS OF SERVICE INFORMATION

Service information	Revision level	Date
Airbus Mandatory Service Bulletin A320–25A1555	01	February 18, 2008.
Airbus Service Bulletin A320–25A1555	Original	June 14, 2007.
Airbus Service Bulletin A320–25–1557	Original	June 14, 2007.
Airbus Service Bulletin A320–25–1557	01	February 7, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (j) of this AD requires that you do a corrective action before further flight.

(2) Although the MCAI specifies doing a repair or replacement and repetitive inspections after the repair or replacement is done if cracking is found in the 80VU rack lower central support, paragraph (j) of this AD requires that you perform a replacement, which eliminates the need for further repetitive inspections of the part.

Other FAA AD Provisions

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

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

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

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

Related Information

(n) Refer to MCAI EASA Airworthiness Directive 2007–0276R1, dated March 18, 2010, (corrected April 12, 2010), and the service information identified in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

Service information	Revision level	Date
Airbus Mandatory Service Bulletin A320–25A1555	02	November 5, 2008.

TABLE 2—RELATED SERVICE INFORMATION—Continued

Service information	Revision level	Date
Airbus Service Bulletin A320–25–1557	02	November 5, 2008.
Airbus Service Bulletin A320–53–1215	Original	November 5, 2008.

Material Incorporated by Reference

(o) You must use the service information specified in paragraphs (o)(1) and (o)(2) of this AD, as applicable, unless the AD specifies otherwise.

(1) For the actions required by this AD: Airbus Mandatory Service Bulletin A320–25A1555, excluding Appendix 1, Revision 02, dated November 5, 2008; and Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

(2) For the optional actions specified by this AD: Airbus Service Bulletin A320–25–1557, Revision 02, dated November 5, 2008; and Airbus Service Bulletin A320–53–1215, dated November 5, 2008.

(3) 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.

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

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

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

Issued in Renton, Washington, on November 15, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29457 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0942; Directorate Identifier 2010–CE–049–AD; Amendment 39–16535; AD 2010–25–02]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Models Jetstream Series 3101 and Jetstream Model 3201 Airplanes

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

ACTION: Final rule.

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

As a result of the fatigue-testing programme on the Jetstream fatigue test specimen, it has been identified that failure of the undercarriage jack mounting shaft assembly can occur.

This condition, if not corrected, could lead to a Main Landing Gear (MLG) collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

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

DATES: This AD becomes effective January 11, 2011.

On January 11, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207, fax: +44 1292 675704; e-mail: *RApublications@baesystems.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; e-mail: *taylor.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 27, 2010 (75 FR 59170). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

As a result of the fatigue-testing programme on the Jetstream fatigue test specimen, it has been identified that failure of the undercarriage jack mounting shaft assembly can occur.

This condition, if not corrected, could lead to a Main Landing Gear (MLG) collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

BAE SYSTEMS have now defined safe life limits for these components.

For the reasons described above, this AD requires the application of safe life limits to these components.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 80 products of U.S. registry. We also estimate that it will take about 15 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $10,000 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $902,000, or $11,275 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–25–02 British Aerospace Regional Aircraft: Amendment 39–16535; Docket No. FAA–2010–0942; Directorate Identifier 2010–CE–049–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to British Aerospace Regional Aircraft Models Jetstream Series 3101 and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

As a result of the fatigue-testing programme on the Jetstream fatigue test specimen, it has been identified that failure of the undercarriage jack mounting shaft assembly can occur.

This condition, if not corrected, could lead to a Main Landing Gear (MLG) collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

BAE SYSTEMS have now defined safe life limits for these components.

For the reasons described above, this AD requires the application of safe life limits to these components.

Actions and Compliance

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

(1) Within 30 days after January 11, 2011 (the effective date of this AD), establish the number of flight cycles (landings) accumulated since installation of each left and right main landing gear radius rod mounting shaft assemblies following paragraph 2.(A) of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 05–JA090143, dated April 30, 2009.

(2) Replace the left and right main landing gear radius rod mounting shaft assembly with an airworthy assembly following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA990142, dated March 26, 1999, within the following:

(i) *For Model Jetstream Series 3101:* Within 38,220 total landings accumulated on each main landing gear radius rod mounting shaft assembly or within 1,000 landings after January 11, 2011 (the effective date of this AD), whichever occurs later; and

(ii) *For Model Jetstream Model 3201:* Within 31,038 total landings accumulated on each main landing gear radius rod mounting shaft assembly or within 1,000 landings after January 11, 2011 (the effective date of this AD), whichever occurs later.

(3) After replacing each main landing gear radius rod mounting shaft assembly as required by paragraph (f)(2) of this AD, repetitively thereafter replace each assembly with an airworthy assembly at intervals not to exceed the following life limits:

(i) *For Model Jetstream Series 3101:* Within 38,220 total landings; and

(ii) *For Model Jetstream Model 3201:* Within 31,038 total landings.

(4) For operators that do not have landing records, determine the number of landings by multiplying the number of hours time-in-service (TIS) accumulated on each main landing gear radius rod mounting shaft assembly by 0.75. For the purpose of this AD:

(i) 1,000 landings equals 1,333 hours TIS;

(ii) 31,038 landings equals 41,384 hours TIS; and

(iii) 38,220 landings equals 50,960 hours TIS.

(5) Compliance with the life limits set in paragraph (f)(3) of this AD may be done by incorporating these limits into the limitations section of the aircraft maintenance manual. You may do this by inserting a copy of this

AD into the limitations section of aircraft maintenance manual.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; e-mail: *taylor.martin@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2010–0162, dated August 4, 2010; BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 05–JA090143, dated April 30, 2009; and British Aerospace Regional Aircraft British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA990142, dated March 26, 1999, for related information.

Material Incorporated by Reference

(i) You must use BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 05–JA090143, dated April 30, 2009; and British Aerospace Regional Aircraft British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA990142, dated March 26, 1999, 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 BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207, fax: +44 1292 675704; e-mail: *RApublications@baesystems.com.*

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

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

Issued in Kansas City, Missouri, on November 23, 2010.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30197 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA–2010–0029]

RIN 0960–AH22

Regulations Regarding Income-Related Monthly Adjustment Amounts to Medicare Beneficiaries' Prescription Drug Coverage Premiums

AGENCY: Social Security Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: We are adding a new subpart to our regulations, which contains the rules we will apply to determine the income-related monthly adjustment amount for Medicare prescription drug coverage premiums. This new subpart implements changes made to the Social Security Act (Act) by the Affordable Care Act. These rules parallel the rules in subpart B of this part, which describes the rules we apply when we determine the income-related monthly adjustment amount for certain Medicare Part B (medical insurance) beneficiaries. These rules describe the new subpart; what information we will use to determine whether you will pay an income-related monthly adjustment amount and the amount of the adjustment when applicable; when we will consider a major life-changing event that results in a significant reduction in your modified adjusted gross income; and how you can appeal our determination about your income-related monthly adjustment amount. These rules will allow us to implement the provisions of the Affordable Care Act on time that relate to the income-related monthly adjustment amount for Medicare prescription drug coverage premiums, when they go into effect on January 1, 2011.

DATES: Effective date: This interim final rule will be effective on December 7, 2010. Comment date: To ensure that your comments are considered, we must receive them no later than February 7, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0029 so that we may associate your comments with the correct regulation.

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

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2010–0029. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

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

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

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

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2–R–24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9793. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Background

Medicare prescription drug coverage (also known as Medicare Part D) is a voluntary program that covers prescription drugs, as explained in 42 CFR Part 423. These regulations cover participants in Medicare prescription drug coverage plans as defined in 42 CFR 423.4, including standalone Medicare prescription drug plans, Medicare Advantage plans with prescription drug coverage, Programs of All-Inclusive Care for the Elderly plans, and cost plans offering prescription drug coverage. We will refer to these plans collectively as Medicare prescription drug coverage plans.

Beneficiaries enrolled in Medicare prescription drug coverage are responsible for deductibles, cost-sharing, and monthly premiums. Costs vary by plan. Beneficiaries with limited income and resources may qualify for "Extra Help" with their monthly premiums, deductibles, and cost-sharing.

The Centers for Medicare & Medicaid Services (CMS) promulgates rules and regulations concerning the Medicare program. CMS sets the Medicare prescription drug coverage base beneficiary premium, which covers approximately 25.5 percent of the cost of the basic Medicare prescription drug coverage. The Federal Government subsidizes approximately 74.5 percent of the cost of this basic Medicare prescription drug coverage with contributions from the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

In March 2010, Congress passed the Affordable Care Act, which establishes an income-related adjustment to Medicare prescription drug coverage premiums.[1] The Affordable Care Act contains rules for determining when, based on income, a beneficiary's monthly premium for Medicare prescription drug coverage will include a monthly adjustment amount.[2] The changes made to the Act by section 3308(a) of the Affordable Care Act are effective for months after December 2010. Beginning in January 2011, an estimated 1.05 million of the approximately 29.2 million beneficiaries enrolled in the Medicare prescription drug coverage program will be assessed an income-related monthly adjustment amount.

Generally, beneficiaries who have a modified adjusted gross income above the threshold level in their most recently filed tax return (usually the tax year 2 years prior to the effective year of our determination) will pay an income-related monthly adjustment amount for their Medicare prescription drug coverage, resulting in these beneficiaries paying more of the cost of their Medicare prescription drug coverage. The income-related monthly adjustment amount applied is in addition to the Medicare Prescription drug coverage plan sponsor's monthly premium and any applicable premium increase for late enrollment or reenrollment. We are responsible for making any determination necessary to carry out the income-related increase in beneficiary premiums.

How This Will Affect You

The phrase "modified adjusted gross income" has the same meaning given to that term in section 1839(i)(4)(A) of the Act.[3] The phrase "modified adjusted gross income" means your "adjusted gross income," as defined in section 62 of the Internal Revenue Code of 1986, plus certain other forms of income that may be excluded from adjusted gross income for the purpose of determining the amount of Federal income tax that you must pay.[4]

We determine the taxable year to use for purposes of determining your modified adjusted gross income.[5] Your modified adjusted gross income is generally determined for the "last taxable year beginning in the second calendar year proceeding the year involved."[6] Thus, in general, we will use your modified adjusted gross income provided by the Internal Revenue Service (IRS) for the tax year 2 years prior to the effective year of the income-related monthly adjustment amount determination we make.

However, an exception allows us to use your modified adjusted gross income for the tax year 3 years prior to the effective year of the income-related monthly adjustment amount determination.[7] In addition, there are certain circumstances in which we may use a more recent taxable year than the taxable year we would otherwise use to determine modified adjusted gross income when your income for the more recent year is significantly less than the income for the taxable year we normally would use. The situations that allow us to use data from a more recent taxable year are when you have experienced the death of your spouse, a marriage or divorce, or other major life-changing events that we specify in our regulations.[8]

The payment of the full amount of the income-related monthly adjustment amount will begin in January 2011.[9] If you are enrolled in Medicare prescription drug coverage prior to January 1, 2011, and you will be required to pay an income-related monthly adjustment amount in 2011, we will notify you by sending you a letter at the end of 2010 about the additional income-related monthly adjustment amount. If you receive Social Security monthly benefits, we will also send a letter explaining how the income-related monthly adjustment amount will affect the amount of those benefits. If you receive Railroad Retirement or Civil Service annuity payments, you will receive a letter from the agency that pays your annuity explaining how the income-related monthly adjustment amount will affect the amount of those benefits.

If you enroll in Medicare prescription drug coverage after January 1, 2011, your Medicare prescription drug coverage premium may not initially include an income-related monthly adjustment amount. If we subsequently determine that you must pay an income-related monthly adjustment amount for your Medicare prescription drug coverage, we will notify you shortly after you enroll in Medicare prescription drug coverage. You will be responsible for your income-related monthly adjustment amounts for those months after December 2010 for which you are enrolled in Medicare prescription drug coverage. If you are enrolled in Medicare prescription drug coverage during 2011 or after, we will notify you prior to the start of each year if you must pay an income-related monthly adjustment amount in that year and how much it will be.

How We Determine Your Income-Related Monthly Adjustment Amount

The amount of your modified adjusted gross income for the applicable tax year will determine if you must pay an income-related monthly adjustment amount. The modified adjusted gross income threshold amount for 2011 through 2019 is $85,000 for individuals who designated a filing status on their

[1] Public Law 111–148 § 3308(a).

[2] *Id.*

[3] § 1860D–13(a)(7)(C) of the Act.

[4] § 1839(i)(4)(A) of the Act.

[5] § 1839(i)(4)(B), (C) of the Act; § 1860D–13(a)(7)(C) of the Act.

[6] § 1839(i)(4)(B) of the Act.

[7] § 1839(i)(4)(B) of the Act.

[8] § 1839(i)(4)(C) of the Act.

[9] § 1860D–13(a)(7)(A) of the Act.

Federal income tax return of single, married filing separately, head of household, or qualifying widow(er) with dependent child; and the corresponding threshold is $170,000 for individuals who file a joint income tax return with their spouse.[10] After 2019, these thresholds will resume adjustment for inflation as required by section 1839(i)(5) of the Act.

We will ask the IRS to send us Federal income tax return information about your modified adjusted gross income for the tax year 2 years before the effective year of our determination of whether an income-related monthly adjustment amount will apply. If modified adjusted gross income information is not available from the IRS for the tax year 2 years before the effective year of our determination, the IRS will send us modified adjusted gross income information for the tax year 3 years before the effective year, if it exceeds the threshold. The IRS will return modified adjusted gross income information only for those Medicare beneficiaries whose modified adjusted gross income exceeds the threshold for their income tax filing status.

We will not ask the IRS for information about your modified adjusted gross income if we have determined that you are participating in the Medicare prescription drug coverage low-income subsidy program described in subpart D of this part, if you receive Supplemental Security Income payments under title XVI of the Act, or if CMS has determined that you are deemed eligible for a full Medicare prescription drug coverage subsidy under section 1860D–14(a)(3)(B)(v) of the Act, as further explained in 42 CFR 423.773(c)(1).

We will use information for the tax year 3 years prior to the effective year of our determination to determine whether you must pay an income-related monthly adjustment amount only until we obtain information for the tax year 2 years prior to the effective year of our determination. When we use such information to make a determination, we will make retroactive corrections that will apply to all months that you paid an incorrect income-related monthly adjustment amount. If we use information from the IRS for the tax year 3 years before the effective year of our determination, you may request that we use information that you provide for the tax year 2 years before the effective year of our determination.

In some cases, you may pay a higher premium based on your information from the tax year 2 years prior to the effective year of our determination. However, providing that information to us, rather than having us receive information later from the IRS, will help you avoid a retroactive correction. In order for us to make an initial determination based on such a request, you must provide a copy of your Federal income tax return for that year by providing us with either your retained copy of your Federal income tax return, a copy that you request from the IRS, or an IRS transcript of your return. If you provide your retained copy of your tax return, we will verify this information with the IRS.

If we receive information from the IRS that shows that you had modified adjusted gross income that exceeded the established threshold for a tax year for which you did not file a tax return, we will make a determination about your income-related monthly adjustment amount for that year. We will apply the highest applicable percentage adjustment based on that information, as required by statute.[11] Beginning in 2011, if the IRS provides information to us to indicate a change in your modified adjusted gross income for a prior tax year, we will use this information to establish corrections for the appropriate effective years, regardless of when we receive such information.

The Sliding Scale Formula and How It Applies to You

CMS will use a sliding scale formula to establish the four income-related monthly adjustment amounts annually beginning in 2011. The use of this sliding scale formula is prescribed in section 1839(i)(3) of the Act. CMS will provide each of the income-related monthly adjustment amounts to be used to SSA. The income-related monthly adjustment amount will be the adjustment from the approximately 25.5 percent base beneficiary premium multiplied by a specified percentage. The percentage used in the calculation changes as the amount of modified adjusted gross income increases within the ranges used to set the income-related monthly adjustment amount. We will use your modified adjusted gross income and your Federal income tax filing status (*e.g.,* single, married filing jointly, married filing separately) to determine whether you must pay an income-related monthly adjustment amount, and if so, what your income-related monthly adjustment amount will be.

The modified adjusted gross income ranges are contained in section 1839(i)(3)(C) of the Act as adjusted by section 1839(i)(5) and by 1839(i)(6), as amended by the Affordable Care Act. The range amounts for individuals who are married filing jointly are double the range amounts for single income tax filers. The IRS recognizes three additional filing statuses: head of household, qualifying widow(er) with dependent child, and married filing separately. If you file as a head of household, a qualifying widow(er) with a dependent child, or married filing separately, we will apply the modified adjusted gross income range applicable to individuals who file their Federal income tax return with a filing status of single.

Individuals with a filing status of married, filing separately, who must pay an income-related monthly adjustment amount because their tax information reflects modified adjusted gross income under section 1839(i)(3)(C)(iii) of the Act and who lived with their spouse at any time during the year, will pay either the third or fourth range of income-related monthly adjustment amount as described in section 1839(i)(3)(C)(i) of the Act. Starting in 2010 for calendar year 2011, and annually thereafter for each following calendar year, CMS will publish the annual modified adjusted gross income ranges and income-related monthly adjustment amounts that are associated with each range. We will use this published information to determine which amount applies to you based on your tax filing status in the tax year we are using to determine your income-related monthly adjustment amount.

If you filed an amended tax return for the tax year we used to make a determination of your income-related monthly adjustment amount, you may request that we use your amended tax return for that year. You must provide us with proof that you filed an amended tax return with the IRS, including your retained copy of the amended tax return and a letter from the IRS verifying receipt of the return or an IRS transcript of your amended tax return.

If you believe that the IRS provided incorrect modified adjusted gross income information and we used that information to determine your income-related monthly adjustment amount, you may request that we make a new income-related monthly adjustment amount determination. You must provide proof of the error in the IRS data and evidence of your actual modified adjusted gross income, such as a copy of the return that you obtain from the IRS. When we use information from your amended or corrected Federal income tax return to make a determination, we will make retroactive adjustments that will apply to all

[10] Section 1839(i)(2) of the Act.

[11] Section 1839(i)(4)(B)(iii) of the Act.

months that you paid an incorrect income-related monthly adjustment amount.

If you believe our determination that you must pay an income-related monthly adjustment amount for your Medicare prescription drug coverage is incorrect because you do not have that coverage, you must contact CMS to get your records corrected. We will use the corrected information we receive from CMS to correct our records and make all necessary adjustments. We will initiate a retroactive refund after we correct our records.

Inflation Adjustment of the Income-Related Monthly Adjustment Amount

The annual inflation adjustment of the thresholds and the modified adjusted gross income ranges used to determine whether you must pay an income-related monthly adjustment amount is temporarily set aside by section 3402 of the Affordable Care Act. From January 1, 2011 through December 31, 2019, the dollar amounts used for 2010 will be the thresholds used to determine if an income-related monthly adjustment amount will apply. The 2010 thresholds in effect until the end of 2019 will be modified adjusted gross income of $170,000 for beneficiaries who file their Federal income taxes as married, filing jointly, and $85,000 for beneficiaries who file their Federal income taxes with any other filing status. CMS will publish the amounts within each range of income in the sliding scale adjusted for inflation each year. After 2019, these thresholds will resume adjustment for inflation as required by section 1839(i)(5) of the Act.

Changes in Your Modified Adjusted Gross Income

In consultation with the Secretary of the Treasury, we are required to establish procedures for determining your modified adjusted gross income for a tax year more recent than the information ordinarily provided by the IRS.[12]

The statute requires that we grant your request to use a more recent tax year to determine your income-related monthly adjustment amount only when all of the following conditions are met:

- You experience a major life-changing event;
- That major life-changing event results in a significant reduction in your modified adjusted gross income;
- You request that we use a more recent tax year's modified adjusted gross income; and
- You provide evidence of the event and the reduction in your modified adjusted gross income.[13]

These rules also contain the requirements that you must meet in order for us to use a more recent tax year's modified adjusted gross income to determine whether you must pay an income-related monthly adjustment amount and what your income-related monthly adjustment amount will be. These rules define qualifying major life-changing events and explain what constitutes a significant reduction in your modified adjusted gross income by reference to the rules we follow under subpart B of this part. We also specify the evidence we will require to establish major life-changing events and the resulting reduction in your modified adjusted gross income by reference to the rules we follow under subpart B of this part.

Major life-changing events include marriage, divorce, and death of a spouse under section 1839(i)(4)(C)(ii)(II) of the Act. We have discretion to include in our regulations additional major life-changing events that would allow us to grant your request that we use information from a more recent tax year to determine your income-related monthly adjustment amount. As noted above, these rules include explanation of the situations when we will determine that you have experienced a major life-changing event for purposes of our rules in subpart B of part 418. The following are the categories of qualifying major life-changing events that we currently recognize:

- Death of a spouse;
- Marriage;
- Marriage ended by divorce or annulment;
- Partial or full work stoppage;
- You or your spouse experiences a loss of income-producing property, provided the loss is not at the direction of you or your spouse (e.g., due to the sale or transfer of the property) and is not a result of the ordinary risk of investment. Examples of the type of property loss include, but are not limited to: loss of real property within a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, loss from real property due to arson, or loss of investment property as a result of fraud or theft due to a criminal act by a third party;
- You or your spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan;
- You or your spouse receives a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization.

In these rules, we determine what constitutes a significant reduction in your income by reference to the rules we follow under section 418.1215. Under those rules, we define a significant reduction in your modified adjusted gross income as any change that results in a reduction or elimination of your income-related monthly adjustment amount. Therefore, a significant reduction in your modified adjusted gross income is any change that lowers your income below the threshold amount or lowers the modified adjusted gross income range in which your income falls. We may grant your request to use a more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount only if you provide us with a copy of a filed Federal income tax return or equivalent document.[14]

When we make an income-related monthly adjustment amount determination based on your request due to a qualifying major life-changing event, the determination will be effective generally on January 1 of the calendar year for which we make the determination. If you enrolled in Medicare prescription drug coverage after January 1 of the year for which we make an income-related monthly adjustment amount determination based on your request due to a major life-changing event, the determination will be effective the month your Medicare prescription drug coverage enrollment becomes effective.

When we make an income-related monthly adjustment amount determination following a major life-changing event using your more recent tax-year's modified adjusted gross income, we will continue trying to get IRS data for that tax year. When we receive modified adjusted gross income information from the IRS for that tax year, we will use the information from the IRS to determine the correct income-related monthly adjustment amount for the year or years for which we used information that you provided, and we will make retroactive corrections, if necessary. Retroactive corrections will apply to all months for which you paid an incorrect income-related monthly adjustment amount.

[12] Section 1839(i)(4)(C) of the Act.

[13] Section 1839(i)(4)(C) of the Act.

[14] Section 1839(i)(4)(C)(ii) of the Act.

If You Disagree With Our Determination of Your Income-Related Monthly Adjustment Amount

We will determine whether you must pay an income-related monthly adjustment, and the amount of any adjustment, based on information we receive from the IRS or you. We will send you a notice of our initial determination of your income-related monthly adjustment amount and the basis for our determination. The notice will explain that, if you disagree with our determination, you may request that we reconsider it within 60 days after the date you receive notice of our initial determination. The notice will also explain that you may request a new initial determination, rather than a reconsideration, if you believe the information we used in our initial determination was correct, but you want us to use different information about your modified adjusted gross income. If you have Medicare Part B without Medicare prescription drug coverage, and you enroll later that same year in Medicare prescription drug coverage, we will apply our income-related monthly adjustment amount determination for Medicare Part B to determine your corresponding income-related monthly adjustment amount for your Medicare prescription drug coverage. When this subsequent action results in increased deductions and a change in the net amount of benefits payable, you will get a letter notifying you of the change in your benefits and information on your appeal rights.

For purposes of this subpart, in making initial determinations and reconsiderations, we will use the rules for the administrative review process that we use for determinations of your rights regarding nonmedical issues under title II of the Act. However, in order to expedite the processing of requests for reconsideration under these rules, we may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate, other than a request in writing, as our title II regulations provide.

If you are dissatisfied with our reconsidered determination, you may request further review, including a hearing before an administrative law judge (ALJ) from the Office of Medicare Hearings and Appeals (OMHA) at the Department of Health and Human Services (HHS), review by the Medicare Appeals Council (MAC) in HHS, and judicial review, consistent with the CMS regulations at 42 CFR part 423.

You may request that we use a modified adjusted gross income for a more recent tax year if you have had a major life-changing event that significantly reduces your income, or if the IRS has provided to us modified adjusted gross income information from 3 years prior to the premium effective year. You may also request that we make a new initial determination when you have amended your Federal income tax return or when you can furnish proof that the IRS has provided incorrect information about your modified adjusted gross income for the year that we used to determine your income-related monthly adjustment amount. These additional options do not affect your right to appeal an initial determination that we make that you must pay an income-related monthly adjustment amount, but allow you to choose an alternative or additional method to request that we use other information to make a new initial determination.

Explanation of the New Subpart

We are adding a new subpart C, Medicare Prescription Drug Coverage Income-Related Monthly Adjustment Amount, to part 418 of our rules. Subpart C contains the rules that we will use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare prescription drug coverage monthly premium plus any applicable premium increase for late enrollment or reenrollment. Following is a description of each section for subpart C.

Introduction, General Provisions, and Definitions

- Section 418.2001 describes what provisions subpart C contains, lists the groups of sections in the subpart, and the subject of each group.
- Section 418.2005 explains the purpose of the income-related monthly adjustment amount and how we will administer the income-related monthly adjustment amount.
- Section 418.2010 contains definitions of terms used throughout this subpart.

Determination of the Income-Related Monthly Adjustment Amount

- Section 418.2101 explains what the income-related monthly adjustment amount is and when it is applied.
- Section 418.2105 defines the modified adjusted gross income thresholds and what the modified adjusted gross income threshold amounts will be in the years 2011–2019. It also describes how threshold amounts will change in later years.
- Section 418.2110 describes the effective date of our initial determination about the income-related monthly adjustment amount.
- Section 418.2112 describes how you will pay your income-related monthly adjustment amount.
- Section 418.2115 defines modified adjusted gross income ranges and explains how we will use those ranges and your tax filing status to determine the amount of your income-related monthly adjustment amount when applicable, and what effect Federal income tax filing status has on the ranges.
- Section 418.2120 explains how we will determine your income-related monthly adjustment amount.
- Section 418.2125 explains how the income-related monthly adjustment amount will affect what you pay for Medicare prescription drug coverage.
- Section 418.2135 describes what modified adjusted gross income information we will use to determine your income-related monthly adjustment amount by reference to our rules in section 418.1135.
- Section 418.2140 describes what will happen if the modified adjusted gross income that we later receive from the IRS is different from the information that we previously used to make a determination of your income-related monthly adjustment amount by reference to our rules in section 418.1140.
- Section 418.2145 describes how we will determine the income-related monthly adjustment amount if the IRS does not provide your modified adjusted gross income information by reference to our rules in section 418.1145.
- Section 418.2150 describes when we will use a copy of your amended Federal income tax return filed with the IRS to determine the income-related monthly adjustment amount by reference to our rules in section 418.1150.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- Section 418.2201 explains when we will use modified adjusted gross income information for a more recent tax year to determine your income-related monthly adjustment amount by reference to our rules in section 418.1201.
- Section 418.2205 describes what is considered a major life-changing event that would justify using information from a more recent tax year by reference to our rules in section 418.1205.

• Section 418.2210 explains what is not considered a major life-changing event that would justify using information from a more recent tax year by reference to our rules in section 418.1210.

• Section 418.2215 explains what we consider a significant reduction in your income for the purpose of these rules by reference to our rules in section 418.1215.

• Section 418.2220 explains what we do not consider a significant reduction in your income for the purpose of these rules by reference to our rules in section 418.1220.

• Section 418.2225 explains which more recent tax years we may use to determine whether you must pay an income-related monthly adjustment amount and the amount of that adjustment by reference to our rules in section 418.1225.

• Section 418.2230 explains the effective date of our income-related monthly adjustment amount determination based on your request to use a more recent tax year by reference to our rules in section 418.1230.

• Section 418.2235 explains when we will stop using your modified adjusted gross income from a more recent tax year for income-related monthly adjustment amount determinations by reference to our rules in section 418.1235.

• Section 418.2240 explains what you should do if your modified adjusted gross income for the more recent tax year changes by reference to our rules in section 418.1240.

• Section 418.2245 explains what will happen if you notify us of a change in your modified adjusted gross income for the more recent tax year.

• Section 418.2250 explains what evidence you will need to support your request for us to use a more recent tax year to determine your income-related monthly adjustment amount by reference to our rules in section 418.1250.

• Section 418.2255 describes what evidence of a major life-changing event you will need to provide to support your request to use a more recent tax year by reference to our rules in section 418.1255.

• Section 418.2260 describes the types of evidence of a major life-changing event that we will not accept by reference to our rules in section 418.1260.

• Section 418.2265 describes what evidence of a significant reduction in your modified adjusted gross income you will need to provide to support your request to use a more recent tax year by reference to our rules in section 418.1265.

• Section 418.2270 explains what evidence we will not accept of a significant reduction in your modified adjusted gross income by reference to our rules in section 418.1270.

Determinations and the Administrative Review Process

• Section 418.2301 explains what is an initial determination regarding your income-related monthly adjustment, and provides examples of determinations that are initial determinations for the purposes of these rules by reference to our rules in section 418.1301.

• Section 418.2305 explains that administrative actions that are not initial determinations are not subject to the administrative review process by reference to our rules in section 418.1305.

• Section 418.2310 explains when you may request that we make a new initial determination by reference to our rules in section 418.1310.

• Section 418.2315 explains how we will notify you when we make an initial determination, and what information the notice will contain by reference to our rules in section 418.1315.

• Section 418.2320 explains the effect of an initial determination.

• Section 418.2322 explains how a Medicare Part B income-related monthly adjustment amount determination will apply to your Medicare prescription drug coverage.

• Section 418.2325 explains when you may request a reconsideration by reference to our rules in section 418.1325.

• Section 418.2330 explains what will happen if you request a reconsideration because you believe that the IRS information we used to make an initial determination about your income-related monthly adjustment amount is incorrect.

• Section 418.2332 explains what you can do if you believe that the CMS information we used is incorrect.

• Section 418.2335 explains what to do if you believe that we based our initial determination on incorrect modified adjusted gross income information by reference to our rules in section 418.1335.

• Section 418.2340 tells you the rules for the administrative review process by reference to our rules in section 418.1340.

• Section 418.2345 tells you the rules we will use to decide if reopening a prior initial or reconsidered determination made by us is appropriate by reference to our rules in section 418.1345.

• Section 418.2350 explains that the HHS rules will apply for review of a reconsidered determination, an ALJ decision, or a decision by the MAC.

• Section 418.2355 explains that the rules for reopening a prior decision made by an ALJ of the OMHA or by the MAC will follow the HHS rules governing reopening.

Change to Medicare Part B Income-Related Monthly Adjustment Amounts

We are also amending our rules on the Medicare Part B (supplementary medical insurance) income-related monthly adjustment amounts to add section 418.1322. In order to provide consistency with the rules at final section 418.2322, this new section explains that if we make an income-related monthly adjustment amount determination for you for the effective year for purposes of the Medicare prescription drug coverage program, we will apply that income-related monthly adjustment amount determination for purposes of determining your income-related monthly adjustment amount for Medicare Part B for the same effective year. As a result, if you have Medicare prescription drug coverage without Medicare Part B and you enroll later that same year in Medicare Part B, the income-related monthly adjustment amount determination for your Medicare prescription drug coverage will also apply to your Medicare Part B.

If we were to delay our determination when you enroll in Medicare Part B later in that year, the delay could cause confusion and larger retroactive corrections. Conveying your income-related monthly adjustment amount determination for Medicare prescription drug coverage or Medicare Part B to the other program when enrollment occurs later in that year will simplify processing and minimize delays in collections of adjustments.

The new rule will facilitate applying the administrative review decision or new initial determination to both programs sooner, because this change will eliminate delays in applying the income-related monthly adjustment amount determination to both Medicare prescription drug coverage and Medicare Part B when you enroll in one of these programs later in the year than the other program. We will not request information from the IRS about your modified adjusted gross income under the following circumstances: if you are eligible for the low-income subsidy for your Medicare prescription drug coverage described in Subpart D of this Part, if you receive supplemental

security income payments, or CMS has determined that you are deemed full Medicare prescription drug coverage subsidy eligible under § 1860D–14(a)(3)(B)(v) of the Act as further explained in 42 CFR 423.773(c)(1).

Clarity of These Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will start to use these rules on the date shown under the "Effective Date" section earlier in this preamble. However, we are also inviting public comments on the changes made by these rules. We will consider any relevant comments we receive, and plan to publish another final rule document to respond to any such comments we receive, and to make any changes to the rules as appropriate based on the comments.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.[15]

With respect to the new rules we are adding under subpart C of part 418 of our rules, we must begin to administer the income-related monthly adjustment amounts to Medicare prescription drug coverage on January 1, 2011, in accordance with section 3308(a) of the Affordable Care Act. In light of the March 23, 2010, enactment date of the Affordable Care Act and our need to have authority in place to make and issue notices of determinations to start collecting income-related monthly adjustment amounts for Medicare prescription drug coverage beginning January 1, 2011, we do not have sufficient time to provide a notice and comment period before promulgating final rules in order to begin administering the program in a timely manner. Thus, we find that the use of the APA's notice and comment rulemaking procedures would be impracticable in this situation.

With respect to the addition of § 418.1322, we find that good cause exists for proceeding without prior public notice and comment because these changes allow us to avoid delay in making a second income-related monthly adjustment amount determination for Medicare Part B when a Medicare prescription drug coverage beneficiary enrolls in Medicare Part B later in the effective year. Avoiding such delay by applying an income-related monthly adjustment amount determination that is based on the same income threshold and ranges simplifies processing and minimizes the need for us to make unnecessary retroactive corrections. Accordingly, we find that prior public comment would be contrary to the public interest with respect to the changes we are making to our rules in subpart B of part 418.

Although we are issuing this rule as an interim final rule, we are inviting public comment on the rule, and we will consider any responsive comments we receive within 60 days of the publication of the rule.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this rule.[16] Because we find that it is impracticable to delay the effective date of our rule changes in order to begin administering the program by the statutory deadline, we are making this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866. Therefore, OMB reviewed it.

Regulatory Flexibility Act

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

Paperwork Reduction Act

We solicited public comment and received OMB approval for the public reporting burdens contained in these rules in a separate Information Collection Request.

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

List of Subjects in 20 CFR Part 418

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

Dated: November 23, 2010.

Michael J. Astrue,

Commissioner of Social Security.

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

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

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

■ 2. Add § 418.1322 to read as follows:

§ 418.1322 How will a Medicare prescription drug coverage income-related monthly adjustment amount determination for the effective year affect your Medicare Part B?

If we make an income-related monthly adjustment amount determination for you for the effective year under subpart C of this part (Medicare Prescription Drug Coverage Income-Related Monthly Adjustment Amount), we will apply that income-related monthly adjustment amount determination under this subpart to determine your Part D income-related monthly adjustment amount for the same effective year. Therefore, if you become enrolled in Medicare Part B in the effective year after we make an income-related monthly adjustment amount determination about your Medicare prescription drug coverage, the income-related monthly adjustment amount determination for your Medicare prescription drug coverage will also be used to determine your Medicare Part B income-related monthly adjustment amount. Any change in your

[15] 5 U.S.C. 553(b)(B).

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

net benefit due will be accompanied by a letter explaining the change in your net benefit and your right to appeal the change.

■ 3. Add subpart C to Part 418 to read as follows:

Subpart C—Income-Related Monthly Adjustments to Medicare Prescription Drug Coverage Premiums

Sec.

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Authority: Secs. 702(a)(5), 1860D–13(a) and (c) of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–113(a) and (c)).

Introduction, General Provisions, and Definitions

§ 418.2001 What is this subpart about?

This subpart implements sections 1860D–13(a)(7) and 1860D–13(c)(4) of the Social Security Act (the Act), as added by section 3308 of the Affordable Care Act (Pub. L. 111–148). Section 3308(a) establishes an income-related monthly adjustment to Medicare prescription drug coverage premiums. Persons enrolled in Medicare prescription drug plans, Medicare Advantage plans with prescription drug coverage, Programs of All-Inclusive Care for the Elderly plans, and cost plans offering prescription drug coverage who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to their Medicare prescription drug coverage plan's monthly premium and any applicable premium increases as described in 42 CFR 423.286. The regulations in this subpart explain how we determine whether you are required to pay an income-related monthly adjustment amount, and if you are, the amount of your adjustment. We have divided the rules into the following groups of sections:

(a) Sections 418.2001 through 418.2010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.2101 through 418.2150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare prescription drug coverage premium.

(c) Sections 418.2201 through 418.2270 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when an income-related monthly adjustment amount determination based on information you provide will be effective, and how long

it will remain in effect. Additionally, these sections describe how we make retroactive adjustments of the income-related monthly adjustment amount based on information you provide, updated information you provide, and information we later receive from the Internal Revenue Service.

(d) Sections 418.2301 through 418.2355 explain how we will notify you of our determination regarding your income-related monthly adjustment amount and contain the rules that we will apply when you disagree with our determination. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

§ 418.2005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is for beneficiaries who have modified adjusted gross income above an established threshold to reimburse the Federal Government for a portion of the Federal subsidy of the Medicare prescription drug coverage. Persons who have modified adjusted gross income above the thresholds described in § 418.2105 will pay an income-related monthly adjustment amount in addition to the premium for their prescription drug coverage. The income-related monthly adjustment amount due will be determined based on the base beneficiary premium amount that represents 25.5 percent of the cost of the basic Medicare prescription drug coverage. The application of an income-related monthly adjustment amount results in an increase in the total amount that those who are affected pay for Medicare prescription drug coverage plans. A person who has modified adjusted gross income above the threshold amount will pay:

(1) The Medicare prescription drug coverage plan monthly premium; plus

(2) Any applicable increase for late enrollment or reenrollment;

(3) An income-related monthly adjustment amount; and

(b) The Centers for Medicare & Medicaid Services in the Department of Health and Human Services establishes rules for eligibility for Medicare prescription drug coverage and enrollment in Medicare prescription drug coverage plans, as well as premium penalties for late enrollment or reenrollment (42 CFR 423.30 through 423.56).

(c) We use information from CMS about enrollment in Medicare prescription drug coverage plans to determine the records that we must send to the IRS.

(d) We use information that we get from the IRS to determine if persons enrolled in Medicare prescription drug coverage plans are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information you provide under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.2010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of CMS in HHS.

(2) *ALJ* means administrative law judge.

(3) *CMS* means the Centers for Medicare & Medicaid Services in HHS.

(4) *Commissioner* means the Commissioner of Social Security.

(5) *HHS* means the Department of Health and Human Services, which oversees the Centers for Medicare & Medicaid Services (CMS), the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (MAC)

(6) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(7) *MAC* means the Medicare Appeals Council in HHS.

(8) *Medicare Prescription Drug Coverage Plan* means a Medicare prescription drug plan, a Medicare Advantage plan with prescription drug coverage, a Program for All-inclusive Care for the Elderly plan offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage.

(9) *OMHA* means the Office of Medicare Hearings and Appeals in HHS.

(10) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(11) *The Act* means the Social Security Act, as amended.

(12) *Title* means a title of the Act.

(13) *We, our,* or *us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an individual or couple has filed an amended tax return that has been accepted by the IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the cost of providing Medicare prescription drug coverage that is paid by the Federal Government. The Federal Government pays this amount to Medicare Prescription Drug coverage Plans from payments made into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare prescription drug coverage if you have modified adjusted gross income above the threshold described in 418.2105.

(5) *Modified Adjusted Gross Income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(6) *Modified adjusted gross income ranges* are the groupings of modified adjusted gross income above the threshold. There are four ranges for most individuals, based on their tax filing status. There are two ranges for those with a tax filing status of married, filing separately, who also lived with their spouse for part of the year. The dollar amounts of the modified adjusted gross income ranges are specified in § 418.2115.

(7) *Premium* is a payment that an enrolled beneficiary pays for Medicare prescription drug coverage to a Medicare prescription drug plan, a Medicare Advantage plan with prescription drug coverage, a Program of All-Inclusive Care for the Elderly Plan offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage. The rules that CMS use annually to establish premium amounts for Medicare prescription drug coverage are contained in 42 CFR 423.286.

(8) *Representative* means, for the purposes of the initial determination and reconsidered determination, an individual as defined in § 404.1703 of this chapter, and for purposes of an ALJ hearing or review by the MAC, an individual as defined in 42 CFR 423.560.

(9) *Tax filing status* means the filing status shown on your individual income

tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(10) *Tax year* means the year for which you have filed or will file your Federal income tax return with the IRS.

(11) *Threshold* means a modified adjusted gross income amount above which you will have to pay an income-related monthly adjustment amount described in paragraph (b)(4) of this section. The dollar amount of the threshold is specified in § 418.2105.

(12) *You* or *your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

Determination of the Income-Related Monthly Adjustment Amount

§ 418.2101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare prescription drug coverage plan monthly premium, plus any applicable increase in that premium as described in 42 CFR 423.286, for your Medicare prescription drug coverage plan when your modified adjusted gross income is above the threshold described in § 418.2105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in § 418.2115 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in § 418.2120.

§ 418.2105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which you will have to pay the income-related monthly adjustment amount.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income threshold is $85,000 for individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is $170,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2019 and for each calendar year thereafter, CMS will set the threshold amounts for the following year. CMS will publish the threshold amounts annually in the **Federal Register**. Published threshold amounts will be effective January 1 of the next calendar year, and remain unchanged for the full calendar year.

§ 418.2110 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount determination will be effective for all months that you are enrolled in a prescription drug coverage plan during the year for which we determine you must pay an income-related monthly adjustment amount.

(b) When we have used modified adjusted gross income information from the IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount, and modified adjusted gross income information for the tax year 2 years prior later becomes available from the IRS, we will review the new information to determine if we should revise our initial determination concerning the income-related monthly adjustment amount. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

(c) When we use your amended tax return, as described in § 418.2150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

Example: You are enrolled in Medicare prescription drug coverage throughout 2011. We use your 2009 modified adjusted gross income as reported to us by the IRS to determine your 2011 income-related monthly adjustment amount. In 2012, you submit to us a copy of your 2009 amended tax return that you filed with the IRS. The modified adjusted gross income reported on your 2009 amended tax return is significantly less than originally reported to the IRS. We use the modified adjusted gross income reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively correct any differences between the amount paid in 2011 and the amount you should have paid based on the amended tax return.

(d) When we use evidence that you provide to proves the IRS modified adjusted gross income information we used was incorrect, as described in § 418.2335, the effective date will be January of the year(s) that is affected or the first month in that year that your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in § 418.2201, the effective date is described in § 418.2230.

§ 418.2112 Paying your income-related monthly adjustment amount.

(a) We will deduct the income-related monthly adjustment amount from your Social Security benefits if they are sufficient to cover the amount owed. If the amount of your Social Security benefits is not sufficient to pay the full amount of your income-related monthly adjustment amount, CMS will bill you for the full amount owed.

(b) If you do not receive Social Security or Railroad Retirement Board benefits, but you receive benefits from the Office of Personnel Management, the Office of Personnel Management will deduct the income-related monthly adjustment amount from your benefits if they are sufficient to cover the amount owed. If the amount of your Office of Personnel Management benefits is not sufficient to pay the full amount of your income-related monthly adjustment amount, CMS will bill you for the full amount owed.

(c) If you do not receive Social Security, Railroad Retirement Board, or Office of Personnel Management benefits, CMS will bill you for your income-related monthly adjustment amount.

§ 418.2115 What are the modified adjusted gross income ranges?

(a) We list the modified adjusted gross income ranges for the calendar years 2011 through and including 2019 for each Federal tax filing category in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment for these calendar years.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

(1) Greater than $85,000 and less than or equal to $107,000;

(2) Greater than $107,000 and less than or equal to $160,000;

(3) Greater than $160,000 and less than or equal to $214,000; and

(4) Greater than $214,000.

(c) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than $170,000 and less than or equal to $214,000;

(2) Greater than $214,000 and less than or equal to $320,000;

(3) Greater than $320,000 and less than or equal to $428,000; and

(4) Greater than $428,000.

(d) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than $85,000 and less than or equal to $129,000; and

(2) Greater than $129,000.

(e) In 2019, CMS will set all modified adjusted gross income ranges for 2020 and publish them in the **Federal Register**. In each year thereafter, CMS will set all modified adjusted gross income ranges and publish the amounts for each range prior to the beginning of each subsequent year.

§ 418.2120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount by using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for calendar years 2011 through and including 2019, and the corresponding percentage of the cost of basic Medicare prescription drug coverage that individuals with modified adjusted gross incomes that fall within each of the ranges will pay. The monthly dollar amounts will be determined by CMS using the formula in § 1860D–13(a)(7)(B) of the Act. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amounts used for each of the ranges of income-related monthly adjustment will be set annually after 2019 as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually after 2019 as described in § 418.2115(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than $85,000 but less than or equal to $107,000	35
More than $107,000 but less than or equal to $160,000	50
More than $160,000 but less than or equal to $214,000	65
More than $214,000	80

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted gross income for that tax year is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than $170,000 but less than or equal to $214,000	35
More than $214,000 but less than or equal to $320,000	50
More than $320,000 but less than or equal to $428,000	65
More than $428,000	80

(3) *Table of applicable percentages for married individuals filing separate returns.* If, for the tax year we use, your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than $85,000 but less than or equal to $129,000	65
More than $129,000	80

(c) For each year after 2019, CMS will announce the modified adjusted gross income ranges for the income-related monthly adjustment amount described in paragraph (b) of this section.

§ 418.2125 How will the income-related monthly adjustment amount affect your total Medicare prescription drug coverage premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare prescription drug coverage premium will be the sum of:

(1) Your prescription drug coverage monthly premium, as determined by your plan; plus

(2) Any applicable increase in the prescription drug coverage monthly premium as described in 42 CFR 423.286; plus

(3) Your income-related monthly adjustment amount.

(b) Regardless of the method you use to pay your Medicare prescription drug coverage premiums to your Medicare prescription drug coverage plan, you will pay any income-related monthly adjustment amount you owe using the method described in 418.2112.

§ 418.2135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

We will follow the rules in § 418.1135, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2140 What will happen if the modified adjusted gross income information from the IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

We will follow the rules in § 418.1140, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2145 How do we determine your income-related monthly adjustment amount if the IRS does not provide information about your modified adjusted gross income?

We will follow the rules in § 418.1145, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2150 When will we use your amended tax return filed with the IRS?

We will follow the rules in § 418.1150, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

§ 418.2201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will follow the rules in § 418.1201, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2205 What is a major life-changing event?

We will follow the rules in § 418.1205, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2210 What is not a major life-changing event?

We will follow the rules in § 418.1210, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2215 What is a significant reduction in your income?

We will follow the rules in § 418.1215, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2220 What is not a significant reduction in your income?

We will follow the rules in § 418.1220, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2225 Which more recent tax year will we use?

We will follow the rules in § 418.1225, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2230 What is the effective date of an income-related monthly adjustment amount initial determination based on a more recent tax year?

We will follow the rules in § 418.1230, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will follow the rules in § 418.1235, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

We will follow the rules in § 418.1240, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from the IRS, as described in § 418.2135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.2135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive corrections that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.2235 occurs.

(d) We will make a new determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from the IRS, as described in § 418.1140(d).

§ 418.2250 What evidence will you need to support your request that we use a more recent tax year?

We will follow the rules in § 418.1250, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2255 What kind of evidence of a major life-changing event will you need to support your request for us to use a more recent tax year?

We will follow the rules in § 418.1255, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2260 What major life-changing event evidence will we not accept?

We will follow the rules in § 418.1260, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2265 What kind of evidence of a significant modified adjusted gross income reduction will you need to support your request?

We will follow the rules in § 418.1265, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2270 What modified adjusted gross income evidence will we not accept?

We will follow the rules in § 418.1270, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

Determinations and the Administrative Review Process

§ 418.2301 What is an initial determination regarding your income-related monthly adjustment amount?

We will follow the rules in § 418.1301, except that any references in

that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2305 What is not an initial determination regarding your income-related monthly adjustment amount?

We will follow the rules in § 418.1305, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2310 When may you request that we make a new initial determination?

We will follow the rules in § 418.1310, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2315 How will we notify you and what information will we provide about our initial determination?

We will follow the rules in § 418.1315, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2320 What is the effect of an initial determination?

We will follow the rules in § 418.1320, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2322 How will a Medicare Part B income-related monthly adjustment amount determination for the effective year affect your Medicare prescription drug coverage?

If we make an income-related monthly adjustment amount determination for you for the effective year under subpart B of this part (Medicare Part B Income-Related Monthly Adjustment Amount), we will apply that income-related monthly adjustment amount determination under this subpart to determine your Part D income-related monthly adjustment amount for the same effective year. Therefore, if you obtain Medicare prescription drug coverage in the effective year after we make an income-related monthly adjustment amount determination about your Medicare Part B, the income-related monthly adjustment amount determination we made for your Medicare Part B will also apply to your Medicare prescription drug coverage. Any change in your net benefit due will be accompanied by a letter explaining the change in your net benefit and your right to appeal the change.

§ 418.2325 When may you request a reconsideration?

We will follow the rules in § 418.1325, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that the IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain proof of a correction from the IRS and request a new initial determination (§ 418.2335). Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.2332 Can you request a reconsideration when you believe that the CMS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that CMS gave us about your participation in a Medicare prescription drug coverage plan is incorrect, we will dismiss your request for a reconsideration and notify you that you must contact CMS to get your records corrected. Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.2335 What should you do if we base our initial determination on modified adjusted gross income information you believe to be incorrect?

We will follow the rules in § 418.1335, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2340 What are the rules for our administrative review process?

We will follow the rules in § 418.1340, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2345 Is reopening of an initial or reconsidered determination made by us ever appropriate?

We will follow the rules in § 418.1345, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2350 What are the rules for review of a reconsidered determination or an ALJ decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 423. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations.

§ 418.2355 What are the rules for reopening a decision by an ALJ of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

The rules in 42 CFR 423.1980 through 423.1986 govern reopenings of decisions by an administrative law judge of the OMHA and decisions by the MAC. A decision by an administrative law judge of the OMHA may be reopened by the administrative law judge or the MAC. A decision by the MAC may be reopened only by the MAC.

[FR Doc. 2010–30276 Filed 12–6–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR 1

[TD 9504]

RIN 1545–BI66

Basis Reporting by Securities Brokers and Basis Determination for Stock

Correction

In rule document 2010–25504 beginning on page 64072 in the issue of Monday, October 18, 2010, make the following corrections:

§ 1.6054–1 [Corrected]

1. On page 64093, in the third column, in § 1.6045–1(d)(6)(i), in the first line "(*i*)" should read "(i)".

2. On the same page, in the same column, in § 1.604–1(d)(6)(ii)(A), in the first line "(*A*)" should read "(A)".

3. On page 64094, in the first column, in § 1.604–1(d)(6)(ii)(B)(*2*), in the first line "(2)"; should read "(*2*)".

4. On the same page, in the same column, in § 1.604–1(d)(6)(iii)(A), in the first line "(*A*)" should read "(A)".

[FR Doc. C1–2010–25504 Filed 12–6–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 40, and 301

[TD 9507]

RIN 1545–BJ13

Electronic Funds Transfer of Depository Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the temporary and final regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. The temporary and final regulations affect all taxpayers that are required to make FTDs, in particular those taxpayers that currently use FTD coupons.

DATES: *Effective Date:* These regulations are effective on January 1, 2011.

Applicability Date: For dates of applicability, see §§ 1.6302–1(d), 1.6302–2(g), 1.6302–3(d), 1.6302–4(b), 31.6071(a)–1(g), 31.6302–1(o), 31.6302–1T(n), 31.6302–2(d), 31.6302–4(e), 31.6302(c)–3(c), 40.6302(c)–1(f), 40.6302(c)–2(c), 40.6302(c)–3(g), 301.6302–1(c), and 301.6656–1(c).

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301), and temporary and final regulations amending the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40), to require the use of EFT for all FTDs and to eliminate the rules regarding FTD coupons.

On August 23, 2010, the Treasury Department and IRS published in the **Federal Register** (75 FR 51707) proposed amendments to the regulations (REG–153340–09) to require EFT for all FTDs and to eliminate the rules regarding FTD coupons. Written public comments responding to the proposed regulations were received. No public hearing was held because the IRS did not receive any requests to speak at the public hearing.

After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Burden on Small Businesses

Many commentators expressed the concern that eliminating FTD coupons would burden small businesses. To help alleviate this perceived burden on small business, the regulations do not change the existing *de minimis* deposit rules allowing taxpayers with tax liabilities under certain thresholds to make a payment with a return. For example, under the *de minimis* deposit rules for employment taxes, that is, social security taxes, Medicare taxes, and withheld income taxes, an employer with a deposit liability of less than $2,500 for a return period may (1) Remit employment taxes with their quarterly or annual tax return, (2) voluntarily make deposits by EFT, or (3) use other methods of payment as provided by the instructions relating to the return.

Several commentators asserted that many small businesses will have difficulty using EFT because they lack computers or internet access. Businesses without a computer may use the ACH debit option, which requires only a telephone call, to schedule a payment through the Electronic Federal Tax Payment System (EFTPS), an authorized method of EFT pursuant to § 31.6302–1(h)(4). To assist taxpayers new to EFTPS, United States-based live operator customer support is available toll-free 24 hours a day, year-round.

A commentator stated that requiring EFTPS will likely result in an increase in user errors based on taxpayers' computer illiteracy. Another commentator stated that requiring EFTPS will produce excessive costs in payment delays and requests for penalty abatement. According to IRS research, however, employers who pay electronically are 31 times less likely to make an error that results in interest or penalties than employers who use FTD coupons.

Several commentators expressed a reluctance to move away from the FTD coupon system based on taxpayers' familiarity with the current system and the relationships they have developed with their local banks. In deciding to discontinue the FTD coupon system, the Financial Management Service (FMS) considered current market conditions. In the last 18 months, more than 100 financial institutions, large and small, have stopped accepting FTD coupons. In many states, few financial institutions still process FTD coupons. Additionally, many states now require employers to file or pay their state business taxes electronically.

2. Alternative Payment Methods

Several commentators requested continued use of FTD coupons or the availability of alternative payment methods. These final regulations conform to the decision by FMS to eliminate the system that enables the processing of FTD coupons. As discussed above, many financial institutions no longer accept FTD coupons. If businesses are unwilling or unable to use EFTPS, they can arrange for a tax professional, financial institution, payroll service, or other trusted third party to make a deposit on their behalf using a master account. Businesses also can arrange for their financial institution to initiate a same-day tax wire payment on their behalf.

One commentator requested that the IRS continue to allow taxpayers to make payments by sending a check or money order to an IRS address when a new entity has applied for, but has not received, an employer identification number (EIN). The time it takes to receive an EIN, however, should no longer be an impediment to using EFTPS. Businesses within the United States or U.S. territories can apply for an EIN online using the IRS Web site. Once the application is completed, the information is validated during the online session, and an EIN is issued immediately. United States and international applicants may also obtain an EIN instantly using the telephone.

3. Raising the De Minimis Amounts

Several commentators requested raising the *de minimis* amounts above $2,500 for payments that may be made with a return. The *de minimis* deposit rules, however vary according to the type of tax involved. For example, the *de minimis* threshold is less than $2,500 per quarter for Form 720, Quarterly Federal Excise Tax Return, under § 40.6302(c)–1(e)(3), but less than $200 per calendar year for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, under § 1.6302–2(a)(1)(iv). Changing the existing *de minimis* deposit rules would create additional complexity and confusion for taxpayers, would upset the current established regulatory scheme, and unduly complicate enforcement of EFTPS.

4. Security and Distrust of Electronic Payment Systems

Several commentators expressed a distrust of electronic payment systems and their security. EFTPS is a safe and secure tax payment system. Online payments require three unique types of information for authentication: a Taxpayer Identification Number, a Personal Identification Number (PIN), and an Internet password. EFTPS provides an instant, printable confirmation number for every payment scheduled. Payments scheduled by phone require a taxpayer identification number and a PIN. Taxpayers who schedule an FTD by phone will receive an eight digit acknowledgement number for future reference.

Moreover, IRS will only receive confirmation that the payment was made. The IRS will not have access to any taxpayer's financial account. Businesses that do not wish to use EFTPS can arrange for their tax professional, financial institution, payroll service, or other trusted third party to make an FTD on their behalf using a master account. Businesses also may arrange for their financial institution to initiate a same-day tax wire payment for them.

5. EFTPS Registration

Several commentators asserted that EFTPS registration is time-consuming, should be easier to use, and should make EFTPS available immediately. All taxpayers now using FTD coupons will be pre-enrolled in Treasury's free EFTPS. When they receive notification of pre-enrollment, they can use the phone or Internet to activate their PIN, enter their financial account information, and begin scheduling payments on the same day.

One commentator asked the IRS to change the EFTPS enrollment process to include a variable to identify fiscal tax year taxpayers because EFTPS sometimes rejects payments by entities that operate on a fiscal tax year due to tax year-end mismatches. This suggestion was not adopted because the IRS already autocorrects payments for fiscal year taxpayers. When a taxpayer schedules an FTD through EFTPS, the system will ask the taxpayer to select the year and quarter to which the payment should be applied. This process should ensure that EFTPS payments are applied correctly.

6. Foreign Taxpayers

One commentator stated that U.S. banks are reluctant to open U.S. bank accounts for foreign corporations. Another commentator asserted that it is difficult for a U.S. citizen residing abroad to open or maintain a U.S. bank account. This commentator suggested that the IRS adapt the registration form and EFTPS software to allow for payments to the IRS from foreign bank accounts, and that the Treasury Department and IRS issue regulations requiring U.S. banks to open U.S. bank accounts for U.S. citizens residing abroad with a foreign address. These suggestions were not adopted. Foreign taxpayers may arrange for their financial institution to initiate a same-day wire payment on their behalf. Foreign taxpayers may also arrange for their qualified intermediary, tax professional, payroll service, or other trusted third party to make a deposit on their behalf using a master account.

7. One-Day Rule

A commentator requested clarification of the One-Day Rule in § 31.6302–1(c) and *Example 4* in § 31.6302–1(d). The commentator argued that the One-Day Rule should be applied only when an employer has accumulated $100,000 or more in undeposited employment taxes within the deposit period applicable to its status as a monthly or semi-weekly depositor and that *Example 4* should be modified consistent with this result. These suggestions were not adopted. The commentator misinterprets the existing rules, which use accumulated taxes rather than undeposited taxes to determine the application of the One-Day rule. The proposed rules merely updated the existing rules and examples to be consistent with the elimination of the FTD coupon system and did not modify this aspect of the existing rules.

Example 4 in the proposed regulations correctly illustrates how the One-Day Rule applies in combination with a subsequent deposit obligation. *Example 4* involves Employer D, a depositor subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates $115,000 in employment taxes. Because D has accumulated $100,000 or more in employment taxes, the One-Day Rule applies, and D therefore must deposit the $115,000 in employment taxes by the next business day, which is Tuesday, January 11, 2011. On Tuesday, January 11, 2011, D accumulates an additional $30,000 in employment taxes. Because the $115,000 in employment taxes accumulated on Monday is already subject to the One-Day Rule, there are no other accumulated taxes to be taken into account in determining D's deposit obligation for the additional $30,000 in employment taxes accumulated on Tuesday. Therefore, D has an additional and separate deposit obligation of $30,000 on Tuesday that must be satisfied by the following Friday. This example is adopted in the final regulations without change.

8. Delay the January 1, 2011 Effective Date

Several commentators requested a delay in the effective date of these temporary and final regulations. These regulations implement the decision of FMS to eliminate the system that enables the processing of FTD coupons as of January 2011. In order to facilitate the transition from FTD coupons, all taxpayers now using coupons will be pre-enrolled in EFTPS. The IRS has begun notifying taxpayers of the upcoming changes and, upon publication of these regulations, will increase efforts to notify affected taxpayers of the EFT requirement. Since April 2010, the Department of Treasury and IRS have been reaching out to critical external stakeholders, including the Small Business Administration and financial institutions and their associations, about the pending FTD changes, and will continue to offer informational sessions and free marketing materials to assist external stakeholders in informing and educating taxpayers about the new requirements.

9. Business Days and Legal Holidays

Prior to the advent of EFTPS, taxpayers made FTDs using an FTD coupon at a government depository bank. Because FTDs could only be made on days the banks were open, the timeliness of deposits under section 6302 was determined by reference to banking days. Furthermore, because many banks are closed on statewide legal holidays, the IRS treated statewide legal holidays as legal holidays in determining the timeliness of deposits.

Since a taxpayer will no longer be able to use a government depository bank to make an FTD using an FTD coupon, these regulations remove references to "banking days" and instead determine the timeliness of deposits by reference to "business days," meaning every calendar day that is not a Saturday, Sunday, or legal holiday under section 7503. Additionally, because EFTPS is available 24 hours a day, seven days a week, the final regulations provide that, consistent with section 7503, the term "legal holiday" for FTD purposes includes only those legal holidays in the District of Columbia. Thus, a statewide legal holiday will no longer be considered a legal holiday unless the holiday coincides with a legal holiday in the District of Columbia. The following days

are currently legal holidays in the District of Columbia: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, District of Columbia Emancipation Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and the day of the inauguration of the President, in every fourth year. The final regulations include several minor changes from the proposed regulations to reflect this application of the legal holiday rule and provide an additional example to illustrate it. See § 31.6302–1(d) *Example 5*.

A separate notice is being issued with these final regulations to provide transitional relief. Notice 2010—states that the IRS will not assert penalties for FTDs made in 2011 that would be considered timely if statewide legal holidays were taken into account.

10. Other Differences From the Proposed Regulations

In addition to the changes described earlier in this preamble, the final regulations include four minor revisions that vary from the text of the proposed regulations. Sections 31.6071(a)–1(a) and (c) are revised, consistent with the intent of the proposed regulations, to eliminate the rules for FTD coupons. The table of contents in § 31.6302–0 was updated to reflect the changes to the regulation headings. The heading to § 40.6302(c)–1T has been revised to remove the reference to government depositaries. Additionally, § 40.6302(c)–3 is further revised to illustrate the computation of the three business day rule for excise taxes when an intervening day is a holiday consistent with the rules in § 31.6302–1(c)(2)(iii) for employment taxes.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, 40, and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entries for sections 1.6302–1 through 1.6302–4 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.6302–1, 1.6302–2, 1.6302–3 and 1.6302–4 also issued under 26 U.S.C. 6302(h). * * *

■ **Par. 2.** Section 1.1461–1 is amended by revising paragraph (a)(1), first sentence, to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax as provided in § 1.6302–2(a). * * *

* * * * *

■ **Par. 3.** Section 1.6302–1 is amended by:

■ 1. Revising the heading.
■ 2. Revising paragraph (a).
■ 3. Removing paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b), and revising the heading for paragraph (b).
■ 4. Removing paragraph (c).
■ 5. Redesignating paragraph (d) as paragraph (c).
■ 6. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.6302–1 Deposit rules for corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) *Requirement.* A corporation, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940, shall deposit all payments of tax imposed by chapter 1 of the Internal Revenue Code (or treated as so imposed by section 6154(h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph (a) does not apply to a foreign corporation or entity that has no office or place of business in the United States.

(b) *Deposits by electronic funds transfer.* * * *

* * * * *

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

■ **Par. 4.** Section 1.6302–2 is amended by:

■ 1. Revising the heading.
■ 2. Revising paragraphs (a)(1)(i), (ii), and (iv).
■ 3. Revising the heading for paragraph (b).
■ 4. Revising paragraph (b)(1).
■ 5. Removing paragraph (b)(6).
■ 6. Adding a sentence to the end of paragraph (g).

The revisions and additions read as follows:

§ 1.6302–2 Deposit rules for tax withheld on nonresident aliens and foreign corporations.

(a) *Time for making deposits*—(1) *Deposits*—(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent that, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount by the 15th day of the following month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section to a quarter-monthly period that occurred during such month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. With respect to section

1446, this section applies only to a publicly traded partnership described in § 1.1446–4.

(ii) *Quarter-monthly deposits.* If at the close of any quarter-monthly period within a calendar month, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is $2,000 or more, the withholding agent shall deposit such aggregate amount within 3 business days after the close of such quarter-monthly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays in the District of Columbia under section 7503. If any of the three weekdays following the close of a quarter-monthly period is a legal holiday under section 7503, the withholding agent has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a quarter-monthly period is New Year's Day, a legal holiday, the required deposit for the quarter-monthly period is not due until the following Thursday rather than the following Wednesday.

* * * * *

(iv) *Annual deposits.* If at the close of December of each calendar year, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is less than $200, the withholding agent may deposit such aggregate amount by March 15 of the following calendar year. If such aggregate amount is not so deposited, it shall be remitted in accordance with paragraph (a)(1) of § 1.1461–1.

* * * * *

(b) *Manner of payment*—(1) *Payments not required by electronic funds transfer.* A payment that is not required to be deposited by this section shall be made separately from a payment required by any other section. The payment may be submitted with the filed return. The timeliness of the payment will be determined by the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions, or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. Each withholding agent making payments under this section shall report on the return, for the period to which such payments are made, information regarding such payments according to the instructions that apply to such return.

* * * * *

(g) * * * Paragraph (b)(1) of this section applies to deposits and payments made after December 31, 2010.

■ **Par. 5.** Section 1.6302–3 is amended by:

■ 1. Revising the heading.
■ 2. Revising paragraph (a).
■ 3. Revising paragraph (c).
■ 4. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.6302–3 Deposit rules for estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit all payments of estimated tax under section 6654(l) with respect to trusts for which such institution acts as a fiduciary by the date otherwise prescribed for paying such tax in the manner set forth in published guidance, publications, forms and instructions.

* * * * *

(c) *Cross-references.* For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1(h) of this chapter.

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

■ **Par. 6.** Section 1.6302–4 is revised to read as follows:

§ 1.6302–4 Voluntary payments by electronic funds transfer.

(a) *Electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in the manner set forth in published guidance, publications, forms and instructions.

(b) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 7.** The authority citation for part 31 is amended by removing the entries for sections 31.6071–1, 31.6302–1 through 6302–3, 31.6302–3, 31.6302–4, 31.6302(c)–2A and 31.6302(c)–3 and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6071(a)–1 also issued under 26 U.S.C.6071.

* * * * *

Section 31.6302–1 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302–1T also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302–2, 31.6302–3, and 31.6302–4 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302(c)–2A also issued under 26 U.S.C. 6157(d) and 6302(a) and (h).

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(a) and (h).* * *

■ **Par. 8.** Section 31.6071(a)–1 is amended by

■ 1. Revising paragraphs (a)(1) and (c).
■ 2. Adding paragraph (g).

The revisions and the addition read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under §§ 31.6011(a)–1 and 31.6011(a)–1T, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under §§ 31.6011(a)–4 and 31.6011(a)–4T, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

* * * * *

(c) *Federal Unemployment Tax Act.* Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under § 31.6011(a)–3 shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period.

* * * * *

(g) *Effective/applicability date.* The elimination of the rules of paragraph (a) and (c) of this section regarding the timeliness of deposits apply to deposits and payments made after December 31, 2010.

§ 31.6302–0 [Amended]

■ **Par. 9.** Section 31.6302–0 is amended by revising the entries for § 31.6302–1(c), (c)(2), (c)(2)(iii), (c)(4), (h), (h)(2), (h)(2)(ii), (h)(2)(iii), (i), (i)(3), (j), (n), and § 31.6302–2 (c) and (d), and by adding entries for § 31.6302–1 (h)(2)(iv) and (o) and § 31.6302–4 to read as follows:

§ 31.6302–0 Table of Contents.

* * * * *

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(c) Deposit rules.

* * * * *

(2) Semi-Weekly rule.

* * * * *

(iii) Special rule for computing days.

* * * * *

(4) Deposits required only on business days.

* * * * *

(h) Time and manner of deposit—deposits required to be made by electronic funds transfer.

* * * * *

(2) Applicability of requirement.

* * * * *

(ii) Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.

(iii) Deposits made after December 31, 2010.

(iv) Voluntary deposits.

* * * * *

(i) Time and manner of deposit.

* * * * *

(3) Time deemed paid.

(j) Voluntary payments by electronic funds transfer.

* * * * *

(n) [Reserved]. For further guidance, see § 31.6302–0T, the entry for § 31.6302–1T(n).

(o) Effective/Applicability date.

§ 31.6302–2 Deposit rules for taxes under the Railroad Retirement Tax Act (R.R.T.A.).

* * * * *

(c) Modification of Monthly rule determination.

* * * * *

(d) Effective/Applicability date.

* * * * *

§ 31.6302–4 Deposit rules for withheld income taxes attributable to nonpayroll taxes.

■ **Par. 10.** Section 31.6302–1 is amended by:

■ 1. Revising the heading.

■ 2. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4).

■ 3. Revising paragraph (d), *Example 1, Example 2, Example 3, Example 4,* and *Example 5.*

■ 4. Revising paragraph (h)(2)(ii).

■ 5. Redesignating paragraph (h)(2)(iii) as paragraph (h)(2)(iv) and revising newly-designated paragraph (h)(2)(iv).

■ 6. Adding new paragraphs (h)(2)(iii) and (iv).

■ 7. Revising paragraph (i)(1) and (i)(3).

■ 8. Removing paragraphs (i)(4), (i)(5) and (i)(6).

■ 9. Adding paragraph (o).

The revisions and additions read as follows:

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(c) *Deposit rules*—(1) *Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(2) *Semi-Weekly rule*—(i) *In general.* An employer that is a semi-weekly depositor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and employment taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) *Special rule for computing days.* Semi-weekly depositors have at least three business days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays in the District of Columbia under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is not due until the following Thursday rather than the following Wednesday.

(3) *Exception—One–Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated $100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of determining whether the $100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on business days.* No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are required only on business days. Business days include every calendar day other than Saturdays, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503. Pursuant to section 7503, the term *legal holiday* means a legal holiday in the District of Columbia. For purposes of this

paragraph (c), the term "legal holiday" does not include other Statewide legal holidays.

* * * * *

(d) * * *

Example 1. Monthly depositor. (i) *Determination of status.* For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of $42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed $50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) *Monthly rule.* During December 2011, A (a monthly depositor) accumulates $3,500 in employment taxes. A has a $3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012, is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

Example 2. Semi-weekly depositor. (i) *Determination of status.* For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, B reported aggregate employment tax liabilities of $88,000 on its quarterly Forms 941. Because that amount exceeds $50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) *Semi-weekly rule.* On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. B has a $4,000 deposit obligation that must be satisfied by the following Wednesday, January 12, 2011.

(iii) *Deposit made within three business days.* On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required deposit. B has a $4,200 deposit obligation that must be satisfied by the following Thursday, January 20, 2011.

Example 3. One-Day rule. On Monday, January 10, 2011, Employer C accumulates $110,000 in employment taxes with respect to wages paid on that date. C has a deposit obligation of $110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

Example 4. One-Day rule in combination with subsequent deposit obligation. Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates $115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional $30,000 in employment taxes. Although D has a $115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of $30,000 on Tuesday that must be satisfied by the following Friday.

Example 5. Legal Holidays. Employer E conducts business in State X. Wednesday, August 31, 2011, is a statewide legal holiday in State X which is not a legal holiday in the District of Columbia. On Friday, August 26, 2011, E (a semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. E has a $4,000 deposit obligation that must be satisfied on or before the following Wednesday, August 31, 2011, notwithstanding that the day is a statewide legal holiday in State X.

* * * * *

(h) * * *

(2) * * *

(ii) *Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.* Unless exempted under paragraph (h)(5) of this section, for deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than $200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the $200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Deposits made after December 31, 2010.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) *Voluntary deposits.* A taxpayer that is authorized to make payment of taxes with a return under regulations may voluntarily make a deposit by electronic funds transfer.

* * * * *

(i) *Time and manner of remittance with a return*—(1) *General rules.* A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

* * * * *

(3) *Time deemed paid.* In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

* * * * *

(o) *Effective/applicability date.* Paragraphs (c), (d) *Examples 1 through 5,* (h)(2)(ii), (h)(2)(iii), (h)(2)(iv),(i)(1) and (i)(3) of this section apply to deposits and payments made after December 31, 2010.

■ **Par. 11.** Section 31.6302–1T is amended by revising paragraphs (g)(1) and (n)(1) to read as follows.

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

* * * * *

(g) *Agricultural employers—Special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944 ("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One–Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In

addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (*See* § 31.6302–1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

* * * * *

(n) *Effective/applicability dates*—(1) *In general.* Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6301–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3,* and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 in effect before December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in § 31.6302–1T in effect before December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

* * * * *

■ **Par. 12.** Section 31.6302–2 is amended by:

■ 1. Revising the heading.

■ 2. Revising paragraph (d).

The revisions read as follows.

§ 31.6302–2 Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).

* * * * *

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

■ **Par. 13.** Section 31.6302–4 is amended by:

■ 1. Revising the heading.

■ 2. Revising paragraph (d).

■ 3. Adding paragraph (e).

The revisions and additions read as follows:

§ 31.6302–4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

* * * * *

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, "Annual Return of Withheld Federal Income Tax," separately from taxes reportable on Form 941, "Employer's QUARTERLY Federal Tax Return" (or any other return, for example, Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"). Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, taxes reported on Form 945 and taxes reported on Form 941 must be deposited separately. (*See* paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) Taxes reported on Form 945 for one calendar year must be deposited separately from taxes reported on Form 945 for another calendar year.

(e) *Effective/applicability date.* Section 31.6302–4(d) applies to deposits and payments made after December 31, 2010.

§ 31.6302(c)–2A [Removed]

■ **Par. 14.** Section 31.6302(c)–2A is removed.

■ **Par. 15.** Section 31.6302(c)–3 is amended by:

■ 1. Revising the heading.

■ 2. Revising paragraph (a)(1), introductory text.

■ 3. Revising paragraph (a)(1)(i).

■ 4. Revising paragraph (a)(1)(ii), introductory text.

■ 5. Removing paragraph (a)(3).

■ 6. Revising paragraph (b).

■ 7. Revising paragraph (c).

■ 8. Removing paragraph (d).

The revisions read as follows:

§ 31.6302(c)–3 Deposit rules for taxes under the Federal Unemployment Tax Act.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, every person that, by reason of the provisions of section 6157, computes the tax imposed by section 3301 on a quarterly or other time period basis shall—

(i) If the person is described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of each of the first three calendar quarters in the calendar year; or

(ii) If the person is other than a person described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of—

* * * * *

(b) *Manner of deposit*—(1) *In general.* A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1(h).

(2) *Time deemed paid.* For the time an amount deposited by electronic funds transfer is deemed paid, see § 31.6302–1(h)(9). For the time an amount remitted with a return is deemed paid, see § 31.6302–1(i)(3).

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Par. 16.** The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 17.** Section 40.6302(c)–1 is amended by:

■ 1. Revising the heading.

■ 2. In paragraph (b)(2)(v), removing the language "that failure may be reported to the appropriate IRS office and".

■ 3. Revising paragraphs (d) and (f).

The revisions read as follows:

§ 40.6302(c)–1 Deposits.

* * * * *

(d) *Deposits required by electronic funds transfer.* All deposits required by this part must be made by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4) of this chapter.

* * * * *

(f) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

* * * * *

■ **Par. 18.** Section 40.6302(c)–1T is amended by revising the section heading to read as follows:

§ 40.6302(c)–1T Deposits (temporary).

* * * * *

§ 40.6302(c)–2 [Amended]

■ **Par. 19.** Section 40.6302(c)–2, paragraph (c), is amended by removing the language "2001" and adding "2001, except that paragraph (b) of this section does not apply after December 31, 2010" in its place.

■ **Par. 20.** Section 40.6302(c)–3 is amended as follows:

■ 1. The heading is revised.

■ 2. Paragraph (c) is revised.

■ 3. In paragraph (g), the language "2004" is removed and "2004, and except that paragraph (f)(5) of this section does not apply after December 31, 2010" is added in its place.

The revisions read as follows:

§ 40.6302(c)–3 Deposits under chapter 33.

* * * * *

(c) *Time to deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be made by the third business day after the seventh day of that semimonthly period. For purposes of this paragraph (c), a "business day" is any calendar day other than a Saturday, Sunday, or legal holiday. The term "legal holiday" means a legal holiday in the District of Columbia as defined in section 7503. Thus, for example, the deposit for the semimonthly period beginning on January 1, 2011 (relating to amounts billed between December 1st and December 15, 2010) is due by January 12, 2011, three business days after January 7, the seventh day of the semimonthly period. The deposit for the semimonthly period beginning on October 1, 2011 (relating to amounts billed between September 1st and September 15, 2011), is due by October 13, 2011, due to the October 10, 2011, Columbus Day holiday.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 21.** The authority citation for part 301 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 22.** Section 301.6302–1 is revised to read as follows:

§ 301.6302–1 Manner or time of collection of taxes.

(a) *Employment and excise taxes.* For provisions relating to the manner or time of collection of certain employment and excise taxes and deposits in connection with the payment thereof, see the regulations relating to the particular tax.

(b) *Income taxes.* (1) For provisions relating to the deposits of income and estimated income taxes of certain corporations, see § 1.6302–1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the deposits of tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2 of this chapter.

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

■ **Par. 23.** Section 301.6656–1 is amended by:

■ 1. Revising paragraph (b).

■ 2. Revising paragraph (c).

The revisions read as follows:

§ 301.6656–1 Abatement of penalty.

* * * * *

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a taxpayer is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

§ 301.7502–2 [Removed]

■ **Par. 24.** Section 301.7502–2 is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: November 30, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–30526 Filed 12–2–10; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215—AB75; 1245—AA02

Rescission of Form T–1, Trust Annual Report; Requiring Subsidiary Organization Reporting on the Form LM–2, Labor Organization Annual Report; Modifying Subsidiary Organization Reporting on the Form LM–3, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations; Final Rule

Correction

In rule document 2010—29226 beginning on page 74936 in the issue of Wednesday, December 1, 2010 make the following correction:

On page 74936, in the second column, under the **DATES** section, in the second line, "January 3, 2011" should read "January 1, 2011".

[FR Doc. C1–2010–29226 Filed 12–6–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 594, 595, and 597

Global Terrorism Sanctions Regulations; Terrorism Sanctions Regulations; Foreign Terrorist Organizations Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is amending the Global Terrorism Sanctions Regulations ("GTSR") and the Terrorism Sanctions Regulations ("TSR") to expand the scope of authorizations in each of those programs for the provision of certain legal services. In addition, OFAC is adding new general licenses under the GTSR, the TSR, and the Foreign Terrorist Organizations Sanctions Regulations to authorize U.S. persons to receive specified types of payment for certain authorized legal services.

DATES: *Effective Date:* December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, *tel.:* 202/622–2490, Assistant Director for

Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

OFAC administers three sanctions programs with respect to terrorists and terrorist organizations. The Terrorism Sanctions Regulations, 31 CFR part 595 ("TSR"), implement Executive Order 12947 of January 23, 1995, in which the President declared a national emergency with respect to "grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process." The Global Terrorism Sanctions Regulations, 31 CFR part 594 ("GTSR"), implement Executive Order 13224 of September 23, 2001, in which the President declared an emergency more generally with respect to "grave acts of terrorism and threats of terrorism committed by foreign terrorists." The Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 ("FTOSR"), implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

OFAC is revising sections in the GTSR and the TSR that authorize the provision of certain legal services to expand the scope of authorized services. In addition, OFAC is adding a new section to the GTSR, TSR, and FTOSR authorizing U.S. persons to receive specified types of payment for certain authorized legal services. Section 594.506 of the GTSR and section 595.506 of the TSR authorize U.S. persons to provide certain authorized legal services to or on behalf of persons whose property and interests in property are blocked under those regulations, provided that any payment of professional fees and reimbursement of incurred expenses must be specifically licensed. OFAC is expanding the scope of these general licenses by adding to the authorized legal services the initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency for or on behalf of persons whose property and interests in property are blocked under the GTSR or TSR.

The FTOSR prohibit financial transactions involving assets, within the possession or control of U.S. financial institutions, in which a designated foreign terrorist organization or its agent has an interest. While the FTOSR, therefore, do not prohibit U.S. persons from providing legal services to designated foreign terrorist organizations or agents thereof, any payment for such services through a U.S. financial institution is prohibited. Section 597.505 of the FTOSR provides that OFAC may issue specific licenses, on a case-by-case basis, authorizing the receipt of payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution for certain legal services provided by U.S. persons to designated foreign terrorist organizations or agents thereof.

In specific licenses it has issued for payment of U.S. persons for professional services rendered and reimbursement of expenses incurred in connection with authorized legal services provided on behalf of blocked persons, OFAC has authorized several payment mechanisms. First, OFAC has issued specific licenses authorizing payment of fees and reimbursement of expenses where the funds used for such payment or reimbursement originate outside the United States and do not come from a U.S. person or any person, other than the person on whose behalf the authorized legal services are provided, whose property and interests in property are blocked. Second, OFAC has issued specific licenses authorizing the establishment of legal defense funds that collect donations from persons who are neither designated nor blocked to pay legal fees and reimburse expenses incurred in connection with authorized legal services rendered on behalf of blocked persons. With this rule, OFAC incorporates these mechanisms for payment into general licenses by adding new section 594.517 to the GTSR, new section 595.515 to the TSR, and new section 597.513 to the FTOSR. These new sections authorize payments from funds originating outside the United States in connection with certain authorized legal services rendered to or on behalf of designated persons, as well as the formation of legal defense funds to gather donations and dispense funds in connection with payments for such legal services.

In addition to the payment mechanisms discussed above, OFAC may issue specific licenses authorizing the release of a limited amount of blocked funds for the payment of legal fees and expenses incurred in seeking administrative reconsideration or judicial review of the designation of a U.S. person or the blocking of the property and interests in property of a U.S. person where alternative funding sources are not available. For more information on this third mechanism for payment, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

Public Participation

Because these amendments to 31 CFR parts 594, 595, and 597 involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 594, 595, and 597 are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 595

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 597

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR parts 594, 595, and 597 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Amend § 594.506 by revising the introductory text of paragraph (a), redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding new paragraph (b) to read as follows:

§ 594.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 594.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to this part:

* * * * *

(b) The provision of legal services not otherwise authorized by paragraph (a) of this section to or on behalf of persons whose property and interests in property are blocked pursuant to § 594.201(a) in connection with the initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

* * * * *

■ 3. Add new § 594.517 to subpart E to read as follows:

§ 594.517 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(a) are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment for legal services authorized pursuant to § 594.506(a) rendered to persons whose property and interests in property are blocked pursuant to § 594.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(a) must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 594.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

Note to paragraph (a)(2) of § 594.517: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 594.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 594.201(a) or any other part of this chapter holds an interest.

(3) Reports. (i) U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (a)(3) of § 594.517: U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 594.506(a).

(4) Nothing in this paragraph (a) authorizes the receipt of payment of professional fees or reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 594.506(b).

Note 1 to paragraph (a) of § 594.517: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (a) to avoid the blocking of the transfer.

Note 2 to paragraph (a) of § 594.517: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this Chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a

limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

(b) *Legal defense funds.* Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a) may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: A copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph (b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose property and interests in property are blocked pursuant to § 594.201(a) or any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a);

(5) Reports. (i) U.S. persons responsible for establishing legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 594.506(a) may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (b)(5) of § 594.517: U.S. persons who receive payments in connection with legal services authorized pursuant to § 594.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 594.506(a).

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services authorized pursuant to § 594.506(b).

Note 1 to paragraph (b) of § 594.517: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (b) to avoid the blocking of the transfer.

Note 2 to paragraph (b) of § 594.517: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are property in which the person to or on whose behalf the legal services were rendered has an interest and is subject to the prohibitions of this part. Persons in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 4. The authority citation for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 5. Amend § 595.506 by revising the introductory text of paragraph (a), redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding new paragraph (b) to read as follows:

§ 595.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 595.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to this part:

* * * * *

(b) The provision of legal services not otherwise authorized by paragraph (a) of this section to or on behalf of persons whose property and interests in property are blocked pursuant to § 595.201(a) in connection with the initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

■ 6. Add new § 595.515 to subpart E to read as follows:

§ 595.515 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(a) are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment for legal services authorized pursuant to § 595.506(a) rendered to persons whose property and interests in property are blocked pursuant to § 595.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(a) must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 595.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

Note to paragraph (a)(2) of § 595.515: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 595.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 595.201(a) or any other part of this chapter holds an interest.

(3) Reports. (i) U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (a)(3) of § 595.515: U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 595.506(a).

(4) Nothing in this paragraph (a) authorizes the receipt of payment of professional fees or reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 595.506(b).

Note 1 to paragraph (a) of § 595.515: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph § 595.515(a) to avoid the blocking of the transfer.

Note 2 to paragraph (a) of § 595.515: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this Chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

(b) *Legal defense funds.* Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a) may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph § 595.515(b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose property and interests in property are blocked pursuant to § 595.201(a) or any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a);

(5) Reports. (i) U.S. persons responsible for establishing legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services authorized pursuant to § 595.506(a) may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (b)(5) of § 595.515: U.S. persons who receive payments in connection with legal services authorized pursuant to § 595.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 595.506(a).

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services authorized pursuant to § 595.506(b).

Note 1 to paragraph (b) of § 595.515: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph § 595.515(b) to avoid the blocking of the transfer.

Note 2 to paragraph (b) of § 595.515: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are property in which the person to or on whose behalf the legal services were rendered has an interest and is subject to the prohibitions of this part. Persons in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 7. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 8. Amend § 597.505 by revising the introductory text and adding a new note to the section to read as follows:

§ 597.505 Payment for certain legal services.

Except as otherwise authorized, specific licenses may be issued, on a case-by-case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution for the following legal services by U.S. persons:

* * * * *

Note to § 597.505: *See* § 597.513 of this part for authorized mechanisms for payment through a U.S. financial institution of professional fees and reimbursement of incurred expenses for legal services specified in this section provided by a U.S. person to or on behalf of a foreign terrorist organization or an agent thereof.

■ 9. Add new § 597.513 to subpart E to read as follows:

§ 597.513 Payments from funds originating outside the United States and the formation of legal defense funds authorized.

(a) *Payments from funds originating outside the United States.* Effective December 7, 2010, receipts of payment through a U.S. financial institution of professional fees and reimbursement of incurred expenses for the provision of legal services specified in § 597.505 are authorized from funds originating outside the United States, provided that:

(1) Prior to receiving payment through a U.S. financial institution for legal services specified in § 597.505 rendered to a foreign terrorist organization or agent thereof, the U.S. person that is an attorney, law firm, or legal services organization provides to the Office of Foreign Assets Control a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph § 597.513(a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(2) The funds received by U.S. persons through a U.S. financial institution as payment of professional fees and reimbursement of incurred expenses for the provision of legal services specified in § 597.505 must not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services specified in § 597.505 are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

Note to paragraph (a)(2) of § 597.513: This paragraph authorizes the person on whose behalf the legal services specified in § 597.505 are to be provided to make payments for specified legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose assets and funds are subject to the prohibitions in § 597.201(a) or whose property and interests in property are blocked pursuant to any other part of this chapter holds an interest.

(3) Reports. (i) U.S. persons who receive payments in connection with legal services specified in § 597.505 must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) If applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in

connection with specified legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (a), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (a)(3) of § 597.513: U.S. persons who receive payments in connection with legal services specified in § 597.505 do not need to obtain specific authorization to make payments through a U.S. financial institution for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses.

(4) Nothing in this paragraph (a) authorizes the receipt of payment through a U.S. financial institution of professional fees or reimbursement of incurred expenses for the provision of legal services not specified in § 597.505.

Note 1 to paragraph (a) of § 597.513: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (a) to avoid the blocking of the transfer.

Note 2 to paragraph (a) of § 597.513: Nothing in this paragraph authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any Executive order or this chapter. U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from the Office of Foreign Assets Control to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available at: *http://www.treas.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf.*

(b) *Legal defense funds.* Effective December 7, 2010, U.S. persons that are attorneys, law firms, or legal services organizations are authorized to form legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services specified in § 597.505 may be debited provided that:

(1) The legal defense fund must be held in a savings or checking account at a financial institution located in the United States;

(2) Prior to debiting the legal defense fund, the U.S. person responsible for establishing the legal defense fund must submit the following information to the Office of Foreign Assets Control: A copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity; the name of the individual or entity responsible for establishing the legal defense fund; the name of the financial institution at which the account for the legal defense fund will be held; a point of contact at the financial institution holding the account for the legal defense fund; and the account name and account number for the legal defense fund. The foregoing information must be accompanied by correspondence referencing this paragraph (b) and is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220;

(3) The legal defense fund may not receive funds from a person whose assets and funds are subject to the prohibitions in § 597.201(a) or whose property and interests in property are blocked pursuant to any other part of this chapter;

(4) The U.S. person responsible for establishing the legal defense fund must notify the financial institution at which the account for the legal defense fund is held that the account may only be debited to make payments of professional fees and reimburse expenses incurred in connection with the provision of legal services specified in § 597.505;

(5) Reports. (i) U.S. persons responsible for establishing legal defense funds from which payments of professional fees and reimbursement for expenses incurred in connection with the provision of legal services specified in § 597.505 may be debited must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the funds were deposited with or debited from the account of the legal defense fund providing information on the funds received by the legal defense fund and debits made to the legal defense fund during the reporting period. Such reports shall specify:

(A) The individual or entity from whom the funds originated and the amount of funds received; and

(B) Any individual or entity to whom any payments were made, including, if applicable:

(*1*) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with specified legal services, such as private investigators or expert witnesses;

(*2*) A general description of the services provided; and

(*3*) The amount of funds paid in connection with such services.

(ii) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect.

(iii) Reports, which must reference this paragraph (b), are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220; and

Note to paragraph (b)(5) of § 597.513: U.S. persons who receive payments in connection with legal services specified in § 597.505 do not need to obtain specific authorization to make payments through a U.S. financial institution for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses.

(6) Nothing in this paragraph (b) authorizes the formation or debiting of legal defense funds in connection with the provision of legal services not specified in § 597.505.

Note 1 to paragraph (b) of § 597.513: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this paragraph (b) to avoid the blocking of the transfer.

Note 2 to paragraph (b) of § 597.513: Any funds remaining in a legal defense fund account after all payments of professional fees and reimbursement of incurred expenses authorized pursuant to this paragraph have been made or upon termination of the legal services for which payment is authorized pursuant to this paragraph are deemed to be funds of the foreign terrorist organization or agent thereof to or on whose behalf the legal services were rendered and subject to the prohibitions of this part. U.S. financial institutions in the possession or control of such remaining funds may apply for the unblocking of the funds by following the procedures set forth at § 501.801 of this chapter.

Dated: December 1, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–30520 Filed 12–6–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2008–0136, Notice No. 3]

RIN 2130–ZA04

Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2011

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident reporting threshold from $9,200 to $9,400 for certain railroad accidents/incidents involving property damage that occur during calendar year 2011. This action is needed to ensure that FRA's reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed in December of 2009.

DATES: This regulation is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–306, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1331); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–204, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1381).

SUPPLEMENTARY INFORMATION:

Background

A "rail equipment accident/incident" is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225 to reflect any cost increases or decreases.

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was revised. 74 FR 65458 (December 10, 2009). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $9,200, which applies to rail equipment accidents/incidents that occur during calendar year 2010, should increase by $200 to $9,400 for equipment accidents/incidents occurring during calendar year 2011, effective January 1, 2011. The specific inputs to the equation set forth in appendix B (*i.e.,* $Tnew = Tprior * [1 + 0.4(Wnew - Wprior)/Wprior + 0.6(Enew - Eprior)/100]$) to part 225 are:

Tprior	Wnew	Wprior	Enew	Eprior
$9,200	$24.73606	$24.04379	184.56666	182.03333

Where: *Tnew* = New threshold; *Tprior* = Prior threshold (with reference to the threshold, "prior" refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**); *Wnew* = New average hourly wage rate, in dollars; *Wprior* = Prior average hourly wage rate, in dollars; *Enew* = New equipment average PPI value; *Eprior* = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (Tnew) is $9,445.80, which is rounded to the nearest $100 for a final new reporting threshold of $9,400.

Notice and Comment Procedures and Effective Date

In this rule, FRA has recalculated the monetary reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005, 70 FR 75414. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to the final rule.

FRA regularly recalculates the monetary reporting threshold using a pre-existing formula near the end of each calendar year. Therefore, any person affected by this rule anticipates the on-going adjustment of the threshold and has reasonable time to make any minor changes necessary to come into compliance with the regulations. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule in December of each calendar year and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data when calculating the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA has found that it has good cause to make the effective date January 1, 2011.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small

Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes "small entities" as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 721 of the approximately 756 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 2,995 rail equipment accidents/incidents were reported in 2006, with small railroads reporting 381 of them. Data for 2007 show that 2,690 rail equipment accidents/incidents were reported, with small railroads reporting 376 of them. Data for 2008 show that 2,469 rail equipment accidents/incidents were reported, with small railroads reporting 302 of them. In 2009, 1,890 rail equipment accidents/incidents were reported, and small railroads reported 278 of them. On average for those four calendar years, small railroads reported about 13% (ranging from 12% to 15%) of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting. Absent this rulemaking (*i.e.,* any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2010 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met. * * *" This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545 (May 26, 1999)) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$140,800,000 or more (as adjusted for inflation)] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $140,800,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: That (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

Privacy Act

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

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.*, $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010 and $9,400 for calendar year 2011) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010 and $9,400 for calendar year 2011. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Issued in Washington, DC, on December 2, 2010.

Karen J. Hedlund,

Chief Counsel.

[FR Doc. 2010–30824 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0079; MO 92210–1117–0000–B4]

RIN 1018–AW52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Vermilion Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended (Act). We designate as critical habitat approximately 21.0 kilometers (km) (13.0 miles (mi)) of stream in 5 units within the Turkey Creek watershed in Jefferson County, AL.

DATES: This rule becomes effective on January 6, 2011.

ADDRESSES: This final rule, the final economic analysis, comments and materials received, as well as supporting documentation we used in preparing this final rule, are available for viewing on the Internet at *http://regulations.gov* at Docket No. FWS–R4–ES–2009–0079 and, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone 601–321–1122; facsimile 601–965–4340.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office (*see* **ADDRESSES** above). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the vermilion darter under the Act (16 U.S.C. 1531 *et seq.*), in this final rule. For more information on the biology and ecology of the vermilion darter, refer to the final listing rule published in the **Federal Register** on November 28, 2001 (66 FR 59367) and the Vermilion Darter Recovery Plan, available on the Internet at *http://ecos.fws.gov/docs/recovery_plan/070802.pdf.* For information on vermilion darter critical habitat, refer to the proposed rule to designate critical habitat for the vermilion darter published in the **Federal Register** on December 3, 2009 (74 FR 63366). Information on the associated draft economic analysis for the proposed rule to designate revised critical habitat was published in the **Federal Register** on June 29, 2010 (75 FR 37350). *See also* the discussion of habitat in the *Physical and Biological Features* section below.

Description and Taxonomy

The vermilion darter (*Etheostoma chermocki* (Teleostei: Percidae)) was officially described in 1992 from Turkey Creek, a tributary of the Locust Fork, which is within the Black Warrior River drainage of Jefferson County, Alabama. The vermilion darter belongs to the subgenus *Ulocentra* (snubnose darters), which includes fish that are slightly laterally compressed, have complete lateral lines, broadly connected gill membranes, a short head, and a small pronounced mouth. The vermilion darter is a medium-sized darter, reaching about 7.1 centimeters (2.8 inches) total length (length from tip of snout to longest portion of tail fin).

Distribution and Habitat

The vermilion darter is a narrowly endemic fish species, occurring in sparse, fragmented, and isolated populations. The species is only known in parts of the upper mainstem reach of Turkey Creek and four tributaries in Pinson, Jefferson County, Alabama (Boschung and Mayden 2004, p. 520). Suitable streams have pools of moderate current alternating with riffles of moderately swift current, and low water turbidity.

The vermilion darter was listed as endangered (66 FR 59367, November 28, 2001) because of ongoing threats to the species and its habitat from urbanization within the Turkey Creek watershed. The primary threats to the species and its habitat are degradation of water quality and substrate

components due to sedimentation and other pollutants, and altered flow regimes from activities such as construction and maintenance activities; impoundments (five within the Turkey Creek and Dry Creek system); instream gravel extractions; off-road vehicle usage; road, culvert, pipe, bridge, gas, sewer and water easement construction; and inadequate stormwater management (Drennen pers. obs. 2007–2009; Blanco and Mayden 1999, pp. 18–20). These activities lead to water quality degradation; the production of pollutants (sediments, nutrients from sewage, pesticides, fertilizers, and industrial and stormwater effluents); stream channel instability; fragmentation; reduced connectivity of the habitat from alteration of stream banks and bottoms; degradation of riffles, runs, and pools; and changes in water quantity and flow necessary for spawning, feeding, resting, and other life-history processes of the species.

Previous Federal Actions

The vermilion darter (*Etheostoma chermocki*) was listed as endangered under the Act on November 28, 2001 (66 FR 59367). At the time of listing, we found that designation of critical habitat was prudent. However, due to budgetary constraints, we did not designate critical habitat at that time. We approved a final recovery plan for the vermilion darter on June 20, 2007 (Service 2007), and announced its availability to the public through a notice published in the **Federal Register** on August 2, 2007 (72 FR 42426).

On November 27, 2007, the Center for Biological Diversity filed a lawsuit against the Secretary of the Interior for our failure to timely designate critical habitat for the vermilion darter (*Center for Biological Diversity* v. *Kempthorne* (07–CV–2928)). In a court-approved settlement agreement, the Service agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by November 30, 2009, and a final designation by November 30, 2010. We published a proposed critical habitat designation for the vermilion darter on December 3, 2009 (74 FR 63366), and accepted public comments for 60 days.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the vermilion darter (74 FR 63366) during the December 3, 2009, to February 1, 2010, comment period. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule. We issued a press release and published a legal notice in the *Birmingham News.* On June 29, 2010, we published a notice reopening the comment period until July 29, 2010, as well as announcing the availability of a draft economic analysis and amended required determinations (75 FR 37350). We directly notified, and requested comments from the State of Alabama. During the open comment periods we received a total seven comments letters: five from organizations and individuals and two from peer reviewers, one of whom also represented the State of Alabama. All comments supported designation of critical habitat for the vermilion darter. We reviewed all comments for substantive issues and new data regarding vermilion darter critical habitat and the economic analysis. Written comments are addressed in the following summary. For readers' convenience, we have combined similar comments into single comments and responses.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. The purpose of such review is to ensure that the designation is based on scientifically sound data, assumptions, and analysis, including input of appropriate experts and specialists. We received written responses from two of the three peer reviewers whom we contacted. The peer reviewers generally agreed that the rule incorporated the best scientific information available, accurately described the species and its habitat requirements (primary constituent elements), accurately characterized the reasons for the species' decline and the threats to its habitat. Both peer reviewers concurred with our critical habitat selection criteria and use of the Vermilion Darter Recovery Plan (USFWS 2007) as a foundation for the proposed designation. Both peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. These editorial revisions and clarifications have been incorporated into the final rule, as appropriate. One peer reviewer recommended an additional area for critical habitat designation.

Peer Reviewer Comments

Comment 1: The six-lane Northern Beltline Corridor and the right-of-way segment for the Northern Beltline Corridor between Alabama Highway 79 and Alabama Highway 75 north of Pinson will have direct and indirect impacts on the critical habitat of the vermilion darter and the general water quality of the Turkey Creek watershed.

Our Response: The Northern Beltline crosses the northern portions of Dry Creek. Only 0.6 km (0.4 mi) of Dry Creek below Innsbrook Lake is designated as critical habitat and this is not within the immediate area of the Northern Beltline. We reviewed and evaluated the Northern Beltline Corridor in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act. We found that the project would not adversely affect the vermilion darter or any federally listed species. We will reinitiate consultation if new information indicates that the Northern Beltline is a threat to the species or its designated critical habitat, or if the project is modified in a manner or extent not previously considered.

Comment 2: Stormwater management is a much larger issue to critical habitat than what is presented in the rule. There is no maximum instream flow limit in reference to the impacts of stormwater on critical habitat.

Our Response: Stormwater management and its implications to water quality are addressed within the threats section of this rule. In regard to water quantity and stormwater management, an instream flow regime with a minimum average daily discharge over 50 cubic feet per second (compiled from U.S. Geological Survey flow data) is critical to the vitality of the critical habitat and is discussed in this rule. However, at this time, we do not have sufficient scientific information to determine a maximum stormwater management flow for the designated critical habitat. Average discharges of greater than 100 cubic feet per second, inclusive of both surface runoff and groundwater sources (springs and seepages), occur sporadically throughout the hydrologic cycle of the critical habitat and may be important maximum flow benchmarks in the future for determining the maximum flow. However, it is not known at this time at what point, or velocity in cubic feet per second, a flow within the hydrological year changes from a

flushing flow to a flow that causes geomorphologic or biological damage.

Comment 3: The commenter states that protection of aquifers and groundwater recharge areas is especially important because of the impacts of climate change on the habitat of the vermilion darter; specifically those impacts "resulting in higher stream water temperatures and lower flows, and stormwater management needs and higher flows." The Service should be consulted for disturbances within the critical habitat area as well as beyond the immediate critical habitat area within the recharge areas particularly in regard to springs and seeps.

Our Response: Critical habitat only affects Federal agencies and those projects which have a Federal nexus. All Federal agencies must comply with section 7 of the Act. Section 7 requires consultation on Federal actions that may adversely affect critical habitat. Under section 7 of the Act, the Federal action agency must provide an analysis of cumulative effects along with other information, when requesting formal consultation. The Service will be consulted for disturbances to areas both within the critical habitat units as well as those within the recharge area, including springs and seeps that contribute to the instream flow in the tributaries, especially during times when stream flows are abnormally low. *See* the Effects of Critical Habitat Designation section of this rule for additional information on section 7 consultation.

Comment 4: The Service should include the spring run on the east side of north bound Alabama Highway 79 as part of the critical habitat designation. Vermilion darters have been collected there during the spawning season.

Our Response: We acknowledge that there have been some sporadic collections of the vermilion darter at this spring run. We did not designate this site as critical habitat because the available information demonstrated that it did not contain the physical and biological features essential to the conservation of the species. See the Primary Constituent Elements section of this rule for areas essential to the conservation of the species. The spring run is located in a road-side ditch about 30 feet long. The run is bordered on all sides by pipes, roads, and a parking lot. It is disjunct and drains into Unit 5 but first must traverse about 100 feet within a pipe under Highway 79. However, although the spring run is not designated as critical habitat, the site will continue to be subject to conservation actions we implement under section 7 of the Act. *See* the Effects of Critical Habitat Designation section of this rule for additional information on section 7 consultation.

Public Comments

Comment 5: The size of the critical habitat for the vermilion darter is inadequate. The entire watersheds of the proposed stream units should be designated as critical habitat. At a minimum, the Service should designate a 300- to 500-foot buffer zone along each bank of all 5 stream units as critical habitat.

Our Response: The Act requires us to designate specific areas within the geographical area occupied by a species at the time it is listed which contain physical or biological features that are essential to the conservation of the species, and that may require special management considerations or protection. Specific areas outside the geographical area occupied by a species at the time of listing may also be designated critical habitat if it is determined that such areas are essential for the conservation of the species. We believe the five stream units that were proposed as critical habitat are occupied by the vermilion darter, are essential to its conservation, and require special management considerations or protection. As described in the proposed rule (74 FR 63366), we considered additional areas; however, they did not meet the criteria for designation as critical habitat.

When evaluating the effects of any Federal action subject to section 7 consultation, all activities which have the potential to destroy or adversely modify designated critical habitat must be considered. Adverse impacts to vermilion darter critical habitat might result from stormwater runoff, eutrophication, or potential changes in hydrology, geomorphology, etc. (*see* Effects of Critical Habitat Designation section below), that would include areas upstream of or adjacent to areas of stream channels that were designated critical habitat. Therefore, specific designation of these areas is unnecessary. Identification of the stream channel as critical habitat provides notice to Federal agencies to review activities conducted anywhere within the drainage for their potential effects to the designated portion of the channel. Critical habitat designation will alert third parties of the importance of the area to the survival of the vermilion darter.

Comment 6: The six-lane Northern Beltline Corridor will cross Dry Creek and follow the hilly terrain within the Turkey Creek watershed. Dry Creek will be placed in culverts at two locations and the general water quality of the Turkey Creek watershed, along with the habitat of the vermilion darter, will be impacted negatively.

Our Response: We evaluated the potential effects of the Northern Beltline on the vermilion darter and other trust resources in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. *et seq.*) and the Endangered Species Act and found that the project would not adversely affect any federally listed species. We will reinitiate consultation if new information indicates that the Northern Beltline is a threat to the species or its designated critical habitat, or if the project is modified in a manner or extent not previously considered (*See Comment 1* in the *Peer Reviewer Comments* section).

Comment 7: Strip mines are occurring along the Locust Fork of the Black Warrior River near Turkey Creek, outside of the vermilion darter's range and the critical habitat, but within the lower portion of the Turkey Creek watershed. The Majestic Mine is permitted to discharge within Turkey Creek via the creek's tributaries. The Service may want to consider extending the critical habitat of Turkey Creek downstream (from the lower section) to the confluence with the Locust Fork of the Black Warrior River, thus allowing the future downstream migration or reintroduction of the species.

Our Response: The areas below the most downstream point of Turkey Creek do not contain, at this time, the physical and biological features essential to the conservation of the vermilion darter. Current and proposed coal mining activities, along with current geomorphic conditions, limit the expansion of the vermilion darter beyond this point within Turkey Creek.

Comment 8: We are skeptical that the rule provides conservation standards adequate for the vermilion darter because critical habitat designation is based on data collected over a decade ago when the species was listed. An updated assessment may have expanded critical habitat to other areas.

Our Response: We utilized the most current information available when preparing this designation, including information from studies conducted since the vermilion darter listing in 2001 (*i.e.,* Khudamrongsawat 2007, Khudamrongsawat *et al.* 2005, Rakes and Shute 2005, USFWS 2007). We have determined that sufficient information is available to identify basic features essential to the conservation of the species as well as specific areas that meet the definition of critical habitat (*see* Critical Habitat section below).

Comment 9: Ensure the continuity in water flow in the Units to promote genetic flow within Turkey Creek, to prevent the extinction of the vermilion darter.

Our Response: We will implement the requirements of the Act and continue to monitor all activities that might affect stream flow and continuity within the designated area in light of their effects on water quality or quantity (*see Physical and Biological Features* and Effects of Critical Habitat Designation sections below).

Comments From States

We received two editorial comments to the critical habitat rule from the Alabama Department of Conservation and Natural Resources, which have been incorporated into this final rule. No official position was expressed by the State on the critical habitat designation.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical or biological features which are essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should designate as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat stream reaches. Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). From 2006 to 2007, drought conditions greatly reduced the habitat of the vermilion darter in Jefferson County (Drennen, pers. obs. 2007). Fluker *et al.* (2007, p. 10) and Drennen (pers. obs. 2007) reported that ongoing drought conditions, coupled with rapid urbanization within watersheds containing imperiled darters, render the populations vulnerable to anthropomorphic

disturbances such as water extraction, vehicles within Turkey Creek and its tributaries, and increased clearing or draining of vulnerable wetlands and spring seeps; especially during the breeding season when the darters concentrate in specific habitat areas of Turkey Creek and its tributaries.

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the vermilion darter that would indicate what areas may become important to the species in the future. Therefore, as explained in the proposed rule (74 FR 63366), we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to:
(1) Conservation actions implemented under section 7(a)(1) of the Act,
(2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we considered the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for the vermilion darter from the biological needs of the species as described in the Critical Habitat section of the proposed rule to designate critical habitat for the vermilion darter published in the **Federal Register** on December 3, 2009 (74 FR 63366), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on November 28, 2001 (66 FR 59367), and the Vermilion Darter Recovery Plan, available on the Internet at *http://ecos.fws.gov/docs/recovery_plan/070802.pdf.* We have determined that the vermilion darter requires the following physical and biological features:

Space for Individual and Population Growth and for Normal Behavior

While little is known about the specific space requirements of the vermilion darter within the Turkey Creek system, darters, in general, depend on space from geomorphically stable streams with varying water quantities and flow. Studies show that vermilion darters are found in the transition zone between a riffle (shallow, fast water) or run (deeper, fast water) and a pool (deep, slow water) (Blanco and Mayden 1999, pp. 18–20), usually at the head and foot of the riffles and downstream of the run habitat. Construction of impoundments and inadequate storm water management in the Turkey Creek watershed have altered stream banks and bottoms; degraded the riffles, runs, and pools; and altered the natural water quantity and flow of the stream. A stable stream maintains its horizontal dimension and vertical profile (stream banks and bottoms), thereby conserving the physical characteristics, including bottom features such as riffles, runs, and pools and the transition zones between these features. The riffles, runs, and pools not only provide space for the vermilion darter, but also provide cover and shelter for breeding, reproduction, and growth of offspring.

In addition, the current range of the vermilion darter is reduced to localized sites due to fragmentation, separation, and destruction of vermilion darter populations. There are both natural (waterfall) and manmade (impoundments) dispersal barriers that not only contribute to the separation and isolation of vermilion darter populations, but also affect water quality. Fragmentation of the species' habitat has isolated the populations within the Turkey Creek system, reduced space for rearing and reproduction and population maintenance, reduced adaptive capabilities, and increased likelihood of local extinctions (Hallerman 2003, pp. 363–364; Burkhead *et al.* 1997, pp. 397–399). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, pp. 282–297; Harris 1984, pp. 93–107). Long-term viability is founded on numerous interbreeding, local populations throughout the range (Harris 1984, pp. 93–107). Continuity of water flow between suitable habitats is essential in preventing further fragmentation of the species' habitat and populations; conserving the essential riffles, runs, and pools needed by vermilion darters; and promoting genetic flow throughout the populations. Continuity of habitat will maintain spawning, foraging, and resting sites, as well as provide gene flow throughout the population. Connectivity of habitats, as a whole, also permits improvement in water quality and water quantity by allowing an unobstructed water flow throughout the connected habitats.

Based on the biological information and needs discussed above, it is essential to protect riffles, runs, and pools, and the continuity of these structures, to accommodate feeding, spawning, growth, and other normal behaviors of the vermilion darter and to promote genetic flow within the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Water Quantity and Flow

Much of the cool, clean water provided to the Turkey Creek main stem comes from consistent and steady groundwater sources (springs) that contribute to the flow and water quantity in the tributaries (Beaver Creek, Dry Creek, Dry Branch, and the unnamed tributary to Beaver Creek). Flowing water provides a means for transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, and diluting nonpoint- and point-source pollution. Impoundments within Turkey and Dry Creeks not only serve as dispersal barriers but also have altered stream flows from natural conditions. Without clean water sources, water quality and water quantity would be considerably lower and would significantly impair the normal life stages and behavior of the vermilion darter.

Favorable water quantity is an average daily discharge of over 50 cubic feet per second within the Turkey Creek main stem (U.S. Geological Survey 2009, compiled from average annual statistics), inclusive of both surface runoff and groundwater sources (springs and seepages) and exclusive of flushing flows. However, the favorable upper limit for the average daily discharge is not known. Along with this average daily discharge, both minimum and flushing flows are necessary within the tributaries to maintain all life stages and to remove fine sediments and dilute other pollutants (Drennen pers. obs., February 2009a; Instream Flow Council 2004, pp. 103–104, 375; Gilbert *et al.* eds. 1994, pp. 505–522; Moffett and Moser 1978, pp. 20–21). These flows are supplemented by groundwater and contribute to the overall stream-cleansing effect by adding to the total flow of high-quality water. This, in turn, helps in maintenance of stream banks and bottoms, essential for normal life stages and behavior of the vermilion darter. However, excessive stormwater flow can alter the geomorphology of the existing stream by disturbing bottom substrate and banksides along with dislodging vegetation.

Water Quality

Factors that can potentially alter water quality are decreases in water quantity through droughts and periods of low seasonal flow, precipitation events, nonpoint-source runoff, human activities within the watershed, random spills, and unregulated stormwater discharge events (Instream Flow Council 2004, pp. 29–50). These factors are particularly harmful during drought conditions when flows are depressed and pollutants are concentrated. Impoundments also affect water quality by reducing water flow, altering temperatures, and concentrating pollutants (Blanco and Mayden 1999, pp. 5–6, 36). Nonpoint-source pollution and alteration of flow regimes are primary threats to the vermilion darter in the Turkey Creek watershed.

Aquatic life, including fish, requires acceptable levels of dissolved oxygen. The type of organism and its life stage determine the level of oxygen required. Generally, among fish, the young life forms are the most sensitive. The amount of dissolved oxygen that is present in the water (the saturation level) depends upon water temperature. As the water temperature increases, the saturated dissolved oxygen level decreases. The more oxygen there is in the water, the greater the assimilative capacity (ability to consume organic wastes with minimal impact) of that water; lower water flows have a reduced assimilative capacity (Pitt 2000, pp. 6–7). Low-flow conditions affect the chemical environment occupied by the fish, and extended low-flow conditions coupled with higher pollutant levels would likely result in behavior changes within all life stages, but could be particularly detrimental to early life stages (*e.g.,* embryo, larvae, and juvenile).

Optimal water quality lacks harmful levels of pollutants such as inorganic contaminants like copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorous fertilizers; and petroleum distillates. Sediment is the most abundant pollutant produced in the Mobile River Basin (Alabama Department of Environmental Management 1996, pp.13–15). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to reduce photosynthesis in aquatic plants, suffocate aquatic insects, smother fish eggs, clog fish gills, and fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival. Eutrophication (excessive nutrients present, such as nitrogen and phosphorous) promotes heavy algal growth that covers and eliminates clean rock or gravel habitats necessary for vermilion darter feeding and spawning. High conductivity values are an indicator of hardness and alkalinity and may denote water nitrification (Hackney *et al.* 1992, pp.199–203). Generally, early life stages of fishes are less tolerant of environmental contamination than adults or juveniles (Little *et al.* 1993, p. 67).

Adequate water quality and good to optimal water quantity are necessary to dilute impacts from storm water and other non-natural effluents. Harmful levels of pollutants impair critical behavior functions in fish and are reflected in population-level responses (reduced population size, biomass, year class success, etc.). Adequate water quantity and flow and good to optimal water quality are also essential for normal behavior, growth, and viability during all life stages. However, excessive water quantity as stormwater runoff may destabilize and move bottom and bankside substrates as well as increase instream sedimentation and decrease water quantity in general.

The vermilion darter requires relatively clean, cool, flowing water within the Turkey Creek main stem and tributaries. The Clean Water Act (33 U.S.C. 1251 *et seq.*), Water Quality Act (Pub. L. 100–4), and Alabama Water Pollution Control Act (Ala. Code § 22–22–1) establish guidelines for water usage and standards of quality for the State's waters necessary to preserve and protect aquatic life. Essential water quality attributes for darters and other fish species in fast to middle water flow streams include: dissolved oxygen levels greater than 6 parts per million (ppm), temperatures between 7 and 26.7 °Celsius (C) (45 and 80 °Fahrenheit (F)) with spring egg incubation temperatures from 12.2 to 18.3 °C (54 to 65 °F), a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of less than approximately 225 micro Siemens per centimeter at 26.7 °C (80 °F), and low concentrations of free or suspended solids (organic and inorganic sediments) less than 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15 mg/L Total Suspended Solids (TSS; measured as mg/L of sediment in water) (Teels *et al.* 1975, pp. 8–9; Ultschet *et al.* 1978, pp. 99–101; Ingersoll *et al.* 1984, pp. 131–138; Kundell and Rasmussen 1995, pp. 211–212; Henley *et al.* 2000, pp. 125–139; Meyer and Sutherland 2005, pp. 43–64).

Food

The vermilion darter is a benthic (bottom) insectivore consuming larval chironomids (midges), tipulids (crane

flies), and hydropsychids (caddisflies), along with occasional microcrustaceans (Boschung and Mayden 2004, p. 520; Khudamrongsawat *et al.* 2005, p. 472). Caddisflies and crane flies are pollution-sensitive organisms found in good to fair water quality (Auburn University 1993, p. 53). Variation in instream flow maintains the stream bottom where food for the vermilion darter is found, transports these organisms, and provides oxygen and other attributes to various invertebrate life stages. Sedimentation has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater) and disrupt aquatic insect communities (Waters 1995, pp. 53–86; Knight and Welch 2001, pp. 132–135). In addition, eutrophication promotes heavy algal growth that covers and eliminates the clean rock or gravel habitats necessary for vermilion darter feeding and spawning. A decrease in water quality and instream flow will correspondingly decrease the major food species for the vermilion darter. Excessive water quantity as stormwater runoff may destabilize and move bottom and bankside substrates as well as increase instream sedimentation and decrease water quantity in general. Thus, food availability for the vermilion darter is affected by instream flow and water quality.

Based on the biological information and needs discussed above, we believe it is essential that vermilion darter habitat consist of unaltered, connected, stable streams to maintain flow, prevent sedimentation, and promote good water quality absent harmful pollutants.

Cover or Shelter (Sites for Breeding, Reproduction or Rearing)

Vermilion darters depend on specific bottom substrates for normal and robust life processes such as spawning, rearing, protection of young during life stages, protection of adults when threatened, foraging, and feeding. These bottom substrates are dominated by fine gravel, along with some sand, coarse gravel, cobble, and bedrock (Blanco and Mayden 1999, pp. 24–26; Drennen pers. obs., February 2009b). The vermilion darter prefers small-sized gravel for spawning substrates (Blanchard and Stiles 2005, pp. 1–12). Occasionally, there are also small sticks and limbs on the bottom substrate and within the water column (Stiles pers. comm., September 1999; Drennen pers. obs., May 2007).

Excessive fine sediments of small sands, silt, and clay may embed in the larger substrates, filling in interstitial spaces between these structures. Loss of these interstitial areas removes spawning and rearing areas, foraging and feeding sites, and escape and protection localities (Sylte and Fischenich 2002, pp. 1–25). In addition, dense, filamentous algae growth on the substrates may restrict or eliminate the usefulness of the interstitial spaces by the vermilion darter. Excessive fine sediment can also impact aquatic vegetation by reducing sunlight due to turbid water or by covering the vegetation with fine silt. Aquatic vegetation is likely also used by vermilion darters as a spawning substrate (Kuhajda pers. comm., May 2007).

Geomorphic instability within the streambed and along the banks from high stormwater flow results in scouring and erosion of these areas, leading to sedimentation and loss of vegetation and substrate for shelter and cover for vermilion darters, their eggs, and their young. This fine sediment deposition also reduces the area available for food sources, such as macroinvertebrates and periphyton (Tullos 2005, pp. 80–81).

Thus, based on the biological information and needs above, essential vermilion darter habitat consists of stable streams with a stream flow sufficient to remove sediment and eliminate the filling in of interstitial spaces and substrate to accommodate spawning, rearing, protection of young, protection of adults when threatened, foraging, and feeding.

Primary Constituent Elements for Vermilion Darter

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the vermilion darter in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species. Areas designated as critical habitat for vermilion darter contain only occupied areas within the species' historical geographic range, and contain sufficient primary constituent elements to support at least one life-history process.

Based on our current knowledge of the life history, biology, and ecology of vermilion darter and the requirements of the habitat to sustain the life-history processes of the species, we determined that the primary constituent elements specific to vermilion darter are:

Primary Constituent Element 1. Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain the bottom features (riffles, runs, and pools) and transition zones between bottom features, to promote connectivity between spawning, foraging, and resting sites, and to maintain gene flow throughout the species' range.

Primary Constituent Element 2. Instream flow regime with an average daily discharge over 50 cubic feet per second, inclusive of both surface runoff and groundwater sources (springs and seepages) and exclusive of flushing flows.

Primary Constituent Element 3. Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per liter, turbidity of an average monthly reading of 10 NTUs and 15mg/l TSS or less; and a specific conductance of no greater than 225 micro Siemens per centimeter at 26.7 °C (80 °F).

Primary Constituent Element 4. Stable bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates along with adequate aquatic vegetation.

With this designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. Each of the areas identified as critical habitat in this rule contains sufficient primary constituent elements to provide for one or more of the life-history processes of the vermilion darter.

Criteria Used To Identify Final Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating all stream reaches in occupied habitat as critical habitat. We have defined "occupied habitat" as those stream reaches occupied at the time of listing, all of which are still known as of the publication date of this rulemaking to be

occupied by the vermilion darter; these stream reaches comprise the entire known range of the vermilion darter. We are not designating any areas outside the known range of the species because the historical range of the vermilion darter, beyond currently occupied areas, is unknown, and dispersal beyond the current range is not likely due to dispersal barriers.

We used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources, Alabama Geological Survey, Samford University, University of Alabama, and the Service to identify the specific locations occupied by the vermilion darter. Currently, occupied habitat for the species is limited and isolated. The species is currently located within the upper mainstem reaches of Turkey Creek and four tributaries: unnamed tributary to Beaver Creek, Beaver Creek, Dry Creek, and Dry Branch in Pinson, Jefferson County, Alabama (Blanco and Mayden 1999, pp.18–20; Drennen pers. obs. March 2008).

Following the identification of the specific locations occupied by the vermilion darter, we determined the appropriate length of stream segments to designate by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the vermilion darter. Populations of vermilion darters are isolated due to dispersal barriers. Accordingly, we set the upstream and downstream limits of each critical habitat unit by identifying landmarks (bridges, confluences, road crossings, and dams) above and below the upper- and lower-most reported locations of the vermilion darter in each stream reach to ensure incorporation of all potential sites of occurrence. These stream reaches were then digitized using 7.5-minute topographic maps and ARCGIS to produce the critical habitat map.

The five final critical habitat units contain physical and biological features with one or more of the primary constituent elements in the appropriate quantity and spatial arrangement for the features to support multiple life processes for the vermilion darter and to be essential to the conservation of this species.

When identifying final critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack primary constituent elements for endangered or threatened species. Areas identified as critical habitat for the vermilion darter below include only stream channels within the ordinary high-water line and do not contain any developed areas or structures.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and which may require special management considerations or protection.

The five units we are designating as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. None of the final critical habitat units are presently under special management or protection provided by a legally operative plan or agreement for the conservation of the vermilion darter. Various activities in or adjacent to the critical habitat units described in this final rule may affect one or more of the physical and biological features. For example, features in the final critical habitat designation may require special management due to threats posed by the following activities or disturbances: urbanization activities and inadequate stormwater management (such as stream channel modification for flood control or gravel extraction) that could cause an increase in bank erosion; significant changes in the existing flow regime within the streams due to water diversion or withdrawal; significant alteration of water quality; significant alteration in the quantity of groundwater and alteration of spring discharge sites; significant changes in stream bed material composition and quality due to construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; stormwater management; and other watershed and floodplain disturbances that release sediments or nutrients into the water. Other activities that may affect physical and biological features in the final critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Final Critical Habitat Designation

We are designating 5 units, totaling approximately 21.2 stream km (13.1 stream mi), as critical habitat for the vermilion darter. The critical habitat units described below constitute our best assessment of areas that currently meet the definition of critical habitat for the vermilion darter. Table 1 identifies the final units for the species, the occupancy of the units, the final extent of critical habitat for the vermilion darter, and ownership of the final designated areas.

TABLE 1—OCCUPANCY AND OWNERSHIP OF THE FINAL CRITICAL HABITAT UNITS FOR THE VERMILION DARTER

Unit	Location	Occupied	Private ownership stream kilometers (miles)	State, county, city ownership stream kilometers (miles)	Total
1	Turkey Creek	Yes	14.9 (9.2)	0.3 (0.2)	15.2 (9.4)
2	Dry Branch	Yes	0.7 (0.4)		0.7 (0.4)
3	Beaver Creek	Yes	0.9 (0.6)	0.1 (< 0.1)	1.0 (0.6)
4	Dry Creek	Yes	0.6 (0.4)		0.6 (0.4)
5	Unnamed Tributary to Beaver Creek	Yes	3.3 (2.0)	0.4 (0.2)	3.7 (2.2)
Total			20.4 (12.6)	0.8 (0.5)	21.2 (13.1)

We present brief descriptions of each unit and reasons why they meet the definition of critical habitat below. The final critical habitat units include the stream channels of the creek and tributaries within the ordinary high-water line. As defined in 33 CFR 329.11, the ordinary high-water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural water line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In Alabama, for nonnavigable waterways, the riparian landowner owns the stream to the middle of the channel.

For each stream reach of final critical habitat, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Regulation Promulgation section at the end of this final rule.

Unit 1: Turkey Creek, Jefferson County, Alabama:

Unit 1 includes 15.2 km (9.4 mi) in Turkey Creek from Shadow Lake Dam downstream to the Section 13/14 (T15S, R2W) line, as taken from the U.S. Geological Survey 7.5-minute topographical map (Pinson quadrangle).

Approximately 14.9 km (9.2 mi), or 98 percent of this area is privately owned. The remaining 0.3 km (0.2 mi), or 2 percent is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Turkey Creek supports the most abundant and robust populations of the vermilion darter in the watershed. Populations of vermilion darters are small and isolated within specific habitat sites of Turkey Creek from Shadow Lake dam downstream to the old strip mine pools (13/14 S T15S R2W section line, as taken from the U.S. Geological Survey 7.5-minute topographical map (Pinson quadrangle)). We consider the entire reach of Turkey Creek that composes Unit 1 to be occupied.

One of the three known spawning sites for the species (Stiles, pers. comm. 1999) is located within the confluence of Turkey Creek and Tapawingo Spring run (Primary Constituent Element 4). In addition, Turkey Creek provides the most darter habitat for the vermilion darters with an abundance of pools, riffles, and runs (Primary Constituent Element 1). These geomorphic structures provide the species with spawning, foraging, and resting areas (Primary Constituent Elements 1 and 4), along with good water quality, quantity, and flow, which support the normal life stages and behavior of the vermilion darter and the species' prey sources (Primary Constituent Elements 2 and 3).

There are five impoundments in Turkey Creek (Blanco and Mayden 1999, pp. 5–6, 36, 63) limiting the connectivity of the range and expansion of the species into other units and posing a risk of extinction to the species due to changes in flow regime, habitat, water quality, water quantity, and stochastic events such as drought. These impoundments accumulate nutrients and undesirable fish species that could propose threats to vermilion darters and the species' habitat. Other threats to the vermilion darter and its habitat in Turkey Creek which may require special management and protection of primary constituent elements include the potential of: urbanization activities (such as channel modification for flood control, inadequate stormwater management, or gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to water diversion or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 2: Dry Branch, Jefferson County, Alabama:

Unit 2 includes 0.7 km (0.4 mi) of Dry Branch from the bridge at Glenbrook Road downstream to the confluence with Beaver Creek.

Most of the 0.7 km (0.4 mi) or close to 100 percent of this area is privately owned. Less than 1 percent of the area is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Dry Branch provides supplemental water quantity to Turkey Creek proper (Unit 1) and provides connectivity to additional bottom substrate habitat and possible spawning sites (Primary Constituent Elements 1, 3, and 4). One of the three known spawning sites for the species is located within the confluence of this reach (Primary Constituent Element 1 and 4) and Beaver Creek (Stiles, pers. comm. 2009).

Threats to the vermilion darter and its habitat at Dry Branch which may require special management and protection of Primary Constituent Elements 1, 3, and 4 include the potential of: urbanization activities (such as channel modification for flood control, inadequate stormwater management, construction of impoundments, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to construction of impoundments, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 3: Beaver Creek, Jefferson County, Alabama:

Unit 3 includes 1.0 km (0.6 mi) of Beaver Creek from the confluence with the unnamed tributary to Beaver Creek and Dry Branch downstream to the confluence with Turkey Creek.

Almost 0.9 km (0.6 mi), or 94 percent of this area, is privately owned. The remaining 0.1 km (under 0.1 mi), or 6 percent is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Beaver Creek supports populations of vermilion darters, and provides supplemental water quantity to Turkey Creek proper (Primary Constituent Elements 1 and 2). The reach also contains adequate bottom substrate for vermilion darters to use in spawning, foraging, and other life processes (Primary Constituent Element 4). Beaver Creek makes available additional habitat and spawning sites, and offers connectivity with other vermilion darter populations within Turkey Creek, Dry Branch, and the unnamed tributary to Beaver Creek (Primary Constituent Elements 1 and 4).

Threats to the vermilion darter and its habitat at Beaver Creek which may require special management of Primary Constituent Elements 1, 2, and 4 include the potential of: urbanization activities (such as channel modification for flood control, construction of impoundments, gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; and other watershed and

floodplain disturbances that release sediments or nutrients into the water.

Unit 4: Dry Creek, Jefferson County, Alabama:

Unit 4 includes 0.6 km (0.4 mi) of Dry Creek from Innsbrook Road downstream to the confluence with Turkey Creek.

One hundred percent of this area, is privately owned.

Dry Creek supports populations of vermilion darters and provides supplemental water quantity to Turkey Creek proper (Primary Constituent Elements 1 and 2). The reach also contains adequate bottom substrate for vermilion darters to use in spawning, foraging, and other life processes (Primary Constituent Element 4). Dry Creek makes available additional habitat and spawning sites, and offers connectivity with vermilion darter populations in Turkey Creek (Primary Constituent Element 1).

There are two impoundments in Dry Creek (Blanco and Mayden 1999, pp. 56, 62) which limit the range and expansion of the species within the unit and increases the risk of extinction due to changes in flow regime, habitat or water quality, water quantity, and stochastic events such as drought. These impoundments amass nutrients and undesirable fish species that could propose threats to vermilion darters and to its habitat. Threats that may require special management and protection of primary constituent elements include: urbanization activities (such as channel modification for flood control and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 5: Unnamed Tributary to Beaver Creek, Jefferson County, Alabama:

Unit 5 includes 3.7 km (2.3 mi) of the unnamed tributary of Beaver Creek from the Section ½ (T16S, R2W) line, as taken from the U.S. Geological Survey 7.5-minute topographical map (Pinson quadrangle), downstream to its confluence with Beaver Creek.

Almost 3.3 km (2.1 mi), or 89 percent of this area, is privately owned. The remaining 0.4 km (0.2 mi), or 11 percent, is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

The unnamed tributary to Beaver Creek supports populations of vermilion darters and provides supplemental water quantity to Turkey Creek proper (Primary Constituent Elements 1 and 2). The unnamed tributary to Beaver Creek has been intensely geomorphically changed by man over the last 100 years. The majority of this reach has been channelized for flood control, as it runs parallel to Highway 79. There are several bridge crossings, and the reach has a history of industrial uses along the bank. However, owing to the groundwater effluent that constantly supplies this reach with clean and flowing water (Primary Constituent Elements 2 and 3), the reach has been able to support significant aquatic vegetation and a population of vermilion darters at several locations. One of the three known spawning sites for the species is located within this reach (Primary Constituent Element 4) (Kuhajda, pers. comm. May 2007).

The headwaters of the unnamed tributary to Beaver Creek is characterized by natural flows that are attributed to an abundance of spring groundwater discharges contributing adequate water quality, water quantity, and substrates (Primary Constituent Elements 1, 2, and 3). Increasing the connectivity of the vermilion darter populations (Primary Constituent Element 1) into the upper reaches of this tributary is an essential conservation requirement as it would expand the range and decrease the vulnerability of these populations to stochastic threats.

Threats to the vermilion darter and its habitat which may require special management and protection of primary constituent elements are: urbanization activities (such as channel modification for flood control, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to insure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the final Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the vermilion darter or its designated critical habitat require section 7 consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. For instance, the Service should be consulted for disturbances to areas both within the final critical habitat units as well as upstream of those areas known to support vermilion darter, including springs and seeps that contribute to the instream flow in the tributaries, especially during times when stream flows are abnormally low (*i.e.,* during droughts). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the vermilion darter. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the vermilion darter include, but are not limited to:

(1) Actions that would alter the geomorphology of the stream habitats. Such activities could include, but are not limited to, inadequate stormwater management, instream excavation or dredging, impoundments, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and could result in entrainment or burial of this species, as well as other direct or cumulative adverse effects to this species and its life cycle.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to, inadequate stormwater management, impoundments, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of the vermilion darter.

(3) Actions that would significantly alter water chemistry or water quality (for example, changes to temperature or pH, introduced contaminants, or excess nutrients). Such activities could include, but are not limited to, inadequate stormwater management, the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of the species and result in direct or cumulative adverse effects on the species and its life cycle.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, inadequate stormwater management; construction projects; road and bridge maintenance activities; livestock grazing; timber harvest; off-road vehicle use; underground gas, sewer, water, and electric lines; and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing excessive sedimentation and burial of the species or their habitats, or eutrophication leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause extreme decreases in nighttime dissolved oxygen levels through vegetation respiration, and cover the bottom substrates and the interstitial spaces between cobble and gravel.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the final critical habitat designation. Therefore, there are no specific lands that meet the criteria for being exempted from the designation of critical habitat under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, national security impacts, and any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination; we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular areas as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (RTI International 2010a). The draft analysis (dated June 29, 2010) was made available for public review from June 29, 2010, through July 29, 2010 (75 FR 37350). No comments were received on the draft economic analysis. Following the close of the comment period, a final analysis (dated July 2010) of the potential economic effects of the designation was developed, taking into consideration any new information (RTI International 2010b).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the vermilion darter. Some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2001, when the vermilion darter was listed under the Act (66 FR 59367), and considers those costs that may occur in the 25 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 25-year timeframe. The FEA quantifies economic impacts of vermilion darter conservation efforts associated with the following categories of activity: Water management, activities that impact water quality, dredging activities and other impacts (*e.g.,* bridge replacement, management plans, and natural gas pipelines).

Total baseline impacts (costs attributable to listing alone) are estimated to be $550,000 annually over the next 25 years, assuming a 7 percent discount rate, and the total incremental costs (costs attributable to designation alone) associated with this rule are estimated to be $39.24 annually over the next 25 years, assuming a 7 percent discount rate (RTI International 2010b).

The critical habitat designation will result in minimal incremental costs because any adverse modification decision would likely be coincident to a jeopardy determination for the same action due to the species' narrow range. Therefore, the only incremental costs are those resulting from the additional administrative costs by the Service and the action agency to include an adverse modification finding within the biological opinion and biological assessment as part of a formal consultation.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, we have determined not to exert our discretion to exclude any areas from this designation of critical habitat for the vermilion darter based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Mississippi Fish and Wildlife Field Office (*see* **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the vermilion darter are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact to national security. Consequently, we have determined not to exert our discretion to exclude any areas from this final designation based on impacts to national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no completed HCPs or other management plans for the species, and the final designation does not include any tribal lands or trust resources. We anticipate no impact to tribal lands, partnerships, or management plans from this final critical habitat designation. Consequently, we are not considering any areas for exclusion from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the vermilion darter will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the vermilion darter. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (*see Application of the* "*Adverse Modification Standard*" section).

In our final economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the vermilion darter and the proposed designation of critical habitat (*see* Section 6 in RTI International 2010b). The analysis is based on the estimated impacts associated with the rulemaking as described in sections 2 through 4 of the analysis, and evaluated the potential economic impacts related to future development, road construction, wastewater treatment, stream alteration, and water withdrawal.

According to the FEA, the Service and action agency are the only entities with direct compliance costs expected to be assessed with the critical habitat designation. Thus, based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the vermilion darter will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this rule to significantly affect energy supplies, distribution, or use. Although two of the final units are below hydropower reservoirs, current and proposed operating regimes have been deemed adequate for the species, and therefore their operations will not be affected by the final designation of critical habitat. All other final units are remote from energy supply, distribution, or use activities. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not jeopardize the continued existence of the species, or destroy or adversely modify critical habitat under section 7 of the Act. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the vermilion darter in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the vermilion darter does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with appropriate State resource agencies in Alabama. The critical habitat designation may have some benefit to this government in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the vermilion darter within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no tribal lands occupied by the vermilion darter at the time of listing that contain the features essential for the conservation of the species, and no tribal lands that are unoccupied by the vermilion darter that are essential for the conservation of the species. Therefore, we have not designated critical habitat for the vermilion darter on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Mississippi Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this package are staff members of the Mississippi Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for "Darter, vermilion" under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
			FISHES				
*	*	*	*	*	*		*
Darter, vermilion	*Etheostoma chermocki.*	U.S.A. (AL)	Entire	E	715	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(e), add an entry for "Vermilion Darter (*Etheostoma chermocki*)," in the same alphabetical order as the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Vermilion Darter (Etheostoma chermocki)

(1) Critical habitat units are depicted for Jefferson County, Alabama, on the map below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the vermilion darter consist of four components:

(i) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features, to promote connectivity between spawning, foraging, and resting sites, and to maintain gene flow throughout the species range.

(ii) Instream flow regime with an average daily discharge over 50 cubic feet per second, inclusive of both surface runoff and groundwater sources (springs and seepages) and exclusive of flushing flows.

(iii) Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per

liter, turbidity of an average monthly reading of 10 NTU and 15mg/l TSS (Nephelometric Turbidity Units; units used to measure sediment discharge; Total Suspended Solids measured as mg/l of sediment in water) or less; and a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of no greater than 225 micro Siemens per centimeter at 26.7 °C (80 °F).

(iv) Stable bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates along with adequate aquatic vegetation.

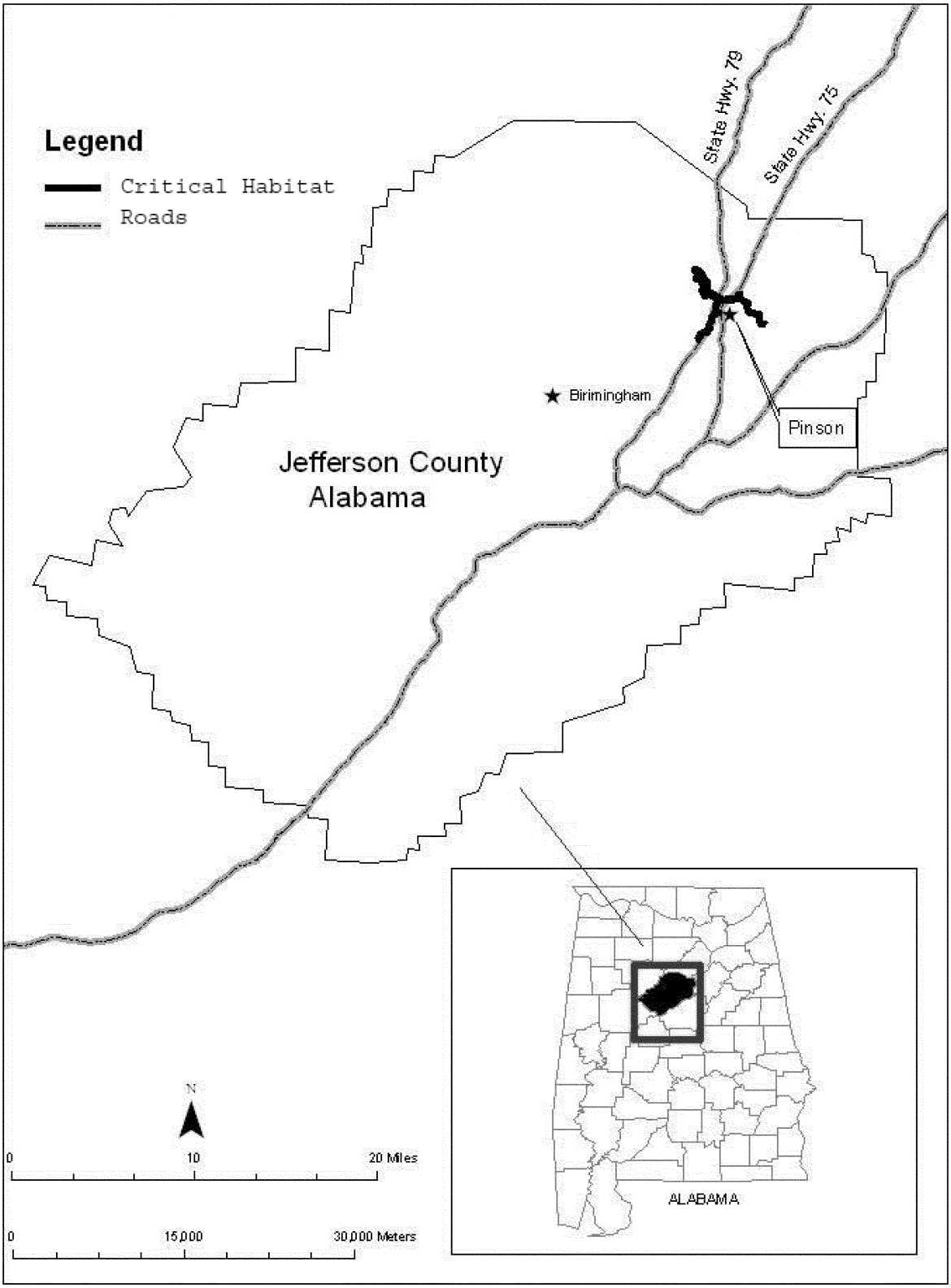
(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Critical habitat unit map. The map was developed from USGS 7.5′ quadrangles. Critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

(5) *Note:* Index map of critical habitat units for the vermilion darter follows:

BILLING CODE 4310–55–P

Index Map - Vermilion Darter



BILLING CODE 4310–55–C

(6) Unit 1: Turkey Creek, Jefferson County, Alabama.

(i) Unit 1 includes the channel in Turkey Creek from Shadow Lake Dam (086°38′22.50″ W long., 033°40′44.78″ N lat.) downstream to the Section 13/14 (T15S, R2W) line (086°42′31.81″ W long., 033°43′23.61″ N lat.).

(ii) Map of Unit 1 is provided at paragraph (10)(ii) of this entry.

(7) Unit 2: Dry Branch, Jefferson County, Alabama.

(i) Unit 2 includes the channel in Dry Branch from the bridge at Glenbrook Road (086°41′6.05″ W long., 033°41′10.65″ N lat) downstream to the confluence with Beaver Creek (86°41′17.39″ W long., 033°41′26.94″ N lat.).

(ii) Map of Unit 2 is provided at paragraph (10)(ii) of this entry.

(8) Unit 3: Beaver Creek, Jefferson County, Alabama.

(i) Unit 3 includes the channel of Beaver Creek from the confluence with the unnamed tributary to Beaver Creek and Dry Branch (086°41′17.54″ W long., 033°41′26.94″ N lat.) downstream to its confluence with Turkey Creek (086°41′9.16″ W long., 033°41′55.86 N lat.).

(ii) Map of Unit 3 is provided at paragraph (10)(ii) of this entry.

(9) Unit 4: Dry Creek, Jefferson County, Alabama.

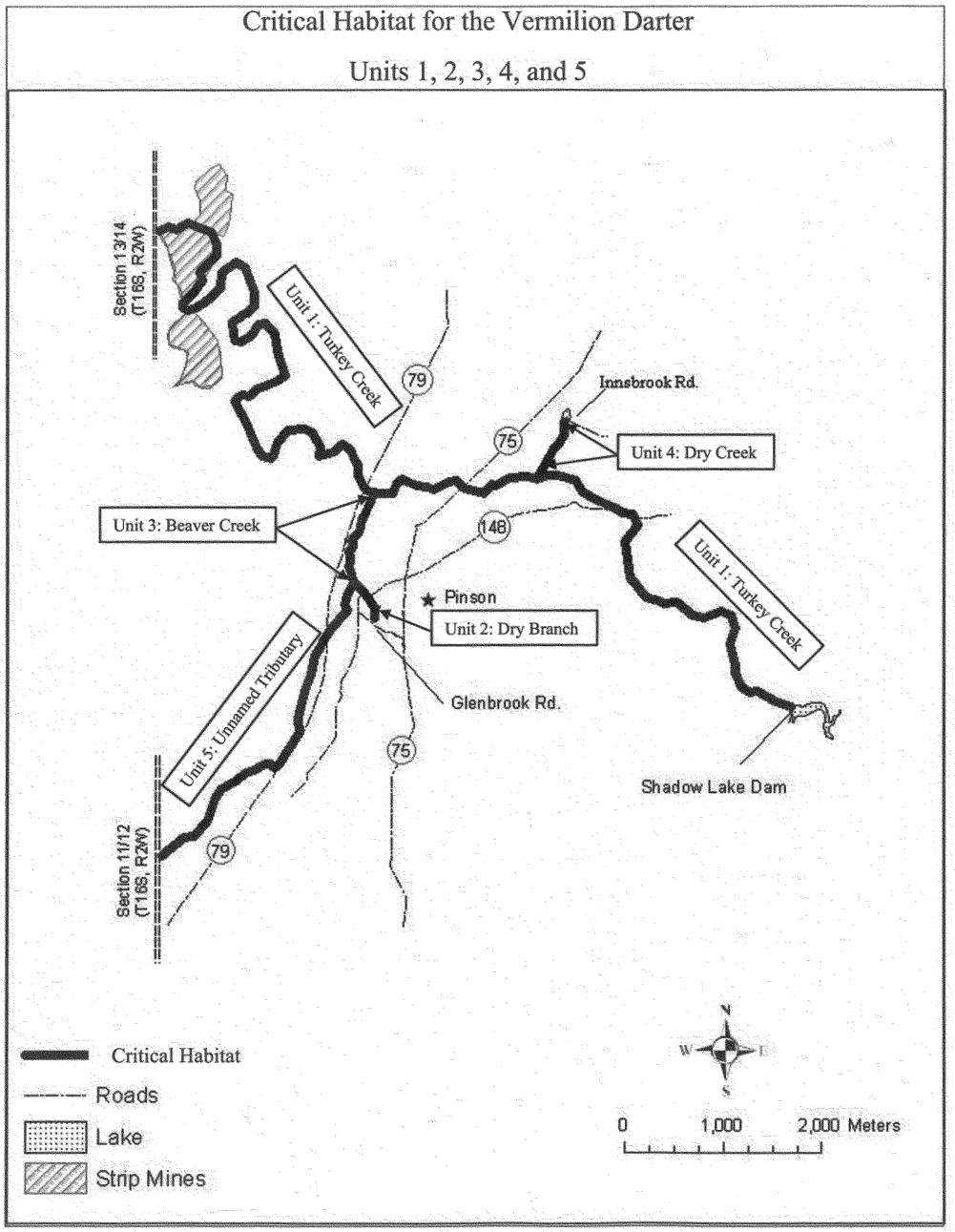
(i) Unit 4 includes the channel of Dry Creek, from Innsbrook Road (086°39′53.78″ W long., 033°42′19.11″ N lat) downstream to the confluence with Turkey Creek (086°40′3.72″ W long., 033°42′1.39″ N lat).

(ii) Map of Unit 4 is provided at paragraph (10)(ii) of this entry.

(10) Unit 5: Unnamed Tributary to Beaver Creek, Jefferson County, Alabama.

(i) Unit 5 includes the channel of the Unnamed Tributary from its confluence with Beaver Creek (086°41′17.54″ W long., 033°41′26.94″ N lat.), upstream to the 1/2(T16S, R2W) section line (086°42′31.70″ W long., 033°39′54.15″ N lat.)

(ii) Map of Units 1, 2, 3, 4, and 5 (Map 2) follows:



* * * * *

Dated: November 26, 2010.

Jane Lyder,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–30420 Filed 12–6–10; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register

Vol. 75, No. 234

Tuesday, December 7, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1192; Directorate Identifier 2010–CE–020–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitively inspecting the elevator control tabs for discrepancies and, if any discrepancies are found, taking necessary corrective actions to bring all discrepancies within acceptable tolerances. This proposed AD results from an evaluation of revisions to the manufacturer's maintenance manual that adds new repetitive inspections of the elevator control tabs. To require compliance with these inspections for U.S. owners and operators we are proposing the inspections through the rulemaking process. We are proposing this AD to add new repetitive inspections of the elevator control tabs. If these inspections are not done, excessive free-play in the elevator control tabs could develop. This condition could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

DATES: We must receive comments on this proposed AD by January 21, 2011.

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

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

For information about the revisions to the FAA-approved maintenance/inspection program identified in this proposed AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *http://www.vikingair.com.* You may review copies of the referenced revisions at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; email: *george.duckett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1192; Directorate Identifier 2010–CE–020–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Viking Aircraft Limited has issued revisions to the DHC–3 Otter maintenance manual (PSM No. 1–3–2) to add a new inspection of the elevator control tabs every 100 hours time-in-service. To require compliance with these inspections for U.S. owners and operators the inspection must be mandated through the rulemaking process.

These inspections, if not done, could result in excessive free-play in the elevator control tabs. This condition, if not detected and corrected, could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

We are continuing to evaluate the cause of the unsafe condition identified in this proposed AD to enable us to obtain better insight into the nature, cause, and extent of excessive free-play in the elevator control tabs. Based on this evaluation, we may consider further rulemaking.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require repetitively inspecting the elevator control tabs for discrepancies and, if any discrepancies are found, taking necessary corrective actions to bring all discrepancies within acceptable tolerances.

We are also proposing a reporting requirement requesting information when the total maximum free play of the elevator servo tab and trim tab relative to the elevator exceeds 1.0 degree (this is equal to a maximum displacement of 0.070″ at the trailing edge of the servo tab). Collecting this information will help us better understand the service history related to

excessive free-play in the elevator control tabs for various Model DHC–3 engine configurations.

Costs of Compliance

We estimate that this proposed AD affects 65 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	Not applicable	$85 per inspection cycle.	$5,525 per inspection cycle.

We estimate the following costs to do any necessary follow-on actions that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Minimum repair	1 work-hour × $85 per hour = $85	$50	$135
Moderate repair	3 work-hours × $85 per hour = $255	150	405
Maximum repair	6 work-hours × $85 per hour = $510	450	960

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.): Docket No. FAA–2010–1192; Directorate Identifier 2010–CE–020–AD.

Comments Due Date

(a) We must receive comments by January 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Viking Air Limited (type certificate No. A–815 formerly held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, that:

(1) do not have the new elevator servo tab and redundant control linkage installed according to Supplemental Type Certificate (STC) No. SA01059SE; and

(2) are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27, Flight Controls.

Unsafe Condition

(e) This AD results from an evaluation of revisions to the manufacturer's maintenance manual that adds new repetitive inspections to the elevator control tabs. To require compliance with these inspections for U.S. owners and operators we are mandating these inspections through the rulemaking process. We are issuing this AD to add new repetitive inspections of the elevator control tabs. If these inspections are not done, excessive free-play in the elevator control tabs could develop. This condition could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect the elevator control tabs for discrepancies.	Initially within the next 50 hours time-in-service (TIS) after the effective date of this AD. Repetitively thereafter inspect at intervals not to exceed 100 hours TIS.	Following DHC–3 Otter Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.
(2) If any discrepancies are found during any inspection required in paragraph (f)(1) of this AD, take necessary corrective actions to bring all discrepancies within acceptable tolerances.	Before further flight after any inspection in which discrepancies are found.	Following DHC–3 Otter Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.
(3) If, during any inspection required in paragraph (f)(1) of this AD, the total maximum free play of the elevator servo tab and trim tab relative to the elevator exceeds 1.0 degree (this is equal to a maximum displacement of 0.070″ at the trailing edge), report the results of the inspection to the FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 30 days after the inspection. We are collecting these inspection results for 24 months after the effective date of this AD. The reporting requirements of this AD are no longer required after that time.	Use the form (Figure 1 of this AD) and submit it to FAA, Small Airplane Directorate, Attn: Jim Rutherford, 901 Locust, Room 301, Kansas City, Missouri 64106.

DOCKET NO. FAA–2010–1192

Airplane Serial Number:
Time-in-Service (TIS) of Airplane:
Airplane Engine Type/Model Number/Series Number:
TIS of Airplane When Current Engine was Installed:
Date When Current Engine was Installed:
STC Number that Installed Current Engine (if applicable):
Out of Tolerance Recording:
Corrective Action Taken:
Any Additional Information (Optional):
Name:
Telephone and/or Email Address:
Date:

Send report to: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; facsimile: (816) 329–4090; email: *jim.rutherford@faa.gov.*

Figure 1

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

Related Information

(h) For more information about this AD, contact George Duckett, Aerospace Engineer, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; email: *george.duckett@faa.gov.*

(i) To get information about the revisions to the maintenance program identified in this proposed AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *http://www.vikingair.com.* You may review copies of the referenced revision at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on December 1, 2010.

Christina L. Marsh,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30614 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1190; Directorate Identifier 2010–SW–038–AD]

RIN 2120–AA64

Airworthiness Directives; Apical Industries Inc. (Apical) Emergency Float Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Apical emergency float kits installed on certain model helicopters under supplemental type certificates. This proposal would require adding placards on each side of the fuselage to identify the location and operation of the liferaft external inflation handle. The proposal would also require replacing each liferaft operation placard to state that external liferafts are installed. This proposal is prompted by a report of a helicopter that crashed into the water, and the pilot did not deploy the floats and liferafts. Two external T-handles were available for deployment of the liferafts but were not used by the passengers because they were unaware of their location. The proposed actions are intended to prevent helicopter occupants from further injury due to unnecessary exposure to harsh water conditions and to aid in deploying liferafts when liferafts are available on the helicopter and can be activated after a water landing.

DATES: Comments must be received on or before February 7, 2011.

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

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

You may get the service information identified in this proposed AD from Apical Industries, Inc., 2608 Temple

Heights Drive, Oceanside, California 92056–3512, telephone (760) 724–5300, fax (760) 758–9612.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Venessa Stiger, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–1190, Directorate Identifier 2010–SW–038–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

This document proposes adopting a new AD for the Apical emergency float kits installed on certain model helicopters under Supplemental Type Certificate Number SR01535LA, SR01779LA, SR01813LA, SR01855LA, or SR00856LA. This proposal would require adding external placards (one on each side of the fuselage or crosstubes) to identify the location and operation of the liferaft external inflation handle. The proposal would also require replacing each liferaft operation placard to state that external liferafts are installed. This proposal is prompted by a report of a helicopter that crashed into the water, and the pilot did not deploy the floats or the liferafts. Two external T-handles were available for deployment of the liferafts but were not used because the passengers were unaware of their location. This condition, if not corrected, could result in unnecessary injury or loss of life in the event of a helicopter landing in the water.

We have reviewed Apical Alert Service Bulletin No. SB2008–01, Revision A, dated March 3, 2010 (ASB), which describes procedures for installing a Liferaft External Inflation Handle Placard, part number (P/N) 600.0897, onto the crosstube or fuselage of each affected helicopter. The ASB also provides instructions for replacing the previous Liferaft Operation Placard, P/N 634.9703, located "typically above an exit"with a revised version (Revision C) stating that the aircraft is equipped with external liferafts.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs modified with an Emergency Float with a Liferaft Kit pursuant to a supplemental type certificate issued to Apical Industries, Inc. Therefore, for those affected model helicopters, the proposed AD would require installing a Liferaft External Inflation Handle Placard, P/N 600.0897, onto the crosstube or fuselage. Also, the AD would require replacing the Liferaft Operation Placard, P/N 634.9703. The actions would be required to be done by following the ASB described previously.

We estimate that this proposed AD would affect 324 helicopters of U.S. registry, and the proposed actions would take about ½ work hour per helicopter to install 4 or 6 placards at an average labor rate of $85 per work hour. Required parts would cost about $70 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $36,450 for the entire fleet.

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Apical Industries Inc.: Docket No. FAA–2010–1190; Directorate Identifier 2010–SW–038–AD.

Applicability: The helicopter models, certificated in any category, with an Emergency Float Kit with a part number (P/N) and serial number (S/N), installed by supplemental type certificate (STC), as follows:

Kit P/N	Kit S/N	Affected helicopter model	STC No.
614.3001	080 and below	Bell Helicopter Textron (Bell) 407	SR01535LA
614.3003	133 and below	Bell 206L, L–1, L–3, and L–4	SR01535LA
614.3007	014 and below	Bell 206A and B	SR01535LA
614.7601	045 and below	Bell 210, 212, 412, 412CF, 412EP, AB412, and AB412EP	SR01779LA
634.2901	012 and below	Bell 427	SR01813LA
644.1801	031 and below	Eurocopter Deutschland Gmbh (Eurocopter) EC135	SR01855LA
20430–300	009 and below	Eurocopter BO–105A, C, S, LS A–1 and LS A–3	SR00856LA

Compliance: Within 180 days, unless accomplished previously.

To install placards to aid in locating and deploying liferafts to prevent further injury or loss of life in the event of a helicopter landing in the water, do the following:

(a) Install the Liferaft External Inflation Handle Placard, P/N 600.0897, shown in Figure 1 of Apical Industries Inc. Alert Service Bulletin SB2008–01, Revision A, dated March 3, 2010 (ASB), on the crosstubes or fuselage near the external T–Handles, as shown for two model helicopters in Figures 2 and 3, by following the Accomplishment Instructions, 1.0, paragraphs 1 through 5, of the ASB.

(b) Remove the Liferaft Operation Placard, P/N 634.9703, Revision N/C through B, as shown in Figure 4 of the ASB, and install Liferaft Operation Placard, P/N 634.9703, Revision C, as shown in Figure 5, above all aircraft exits, inside the aircraft in plain view.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, *Attn:* Venessa Stiger, Aviation Safety Engineer, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Codes are 2564: Liferaft and 3212: Emergency Flotation Section.

Issued in Fort Worth, Texas, on November 22, 2010.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–30616 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA–2010–N–0568]

RIN 0910–AG41

Required Warnings for Cigarette Packages and Advertisements; Research Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has added a document to the docket for the proposed rulemaking concerning required textual warnings and accompanying graphics to be displayed on cigarette packages and in cigarette advertisements. The document is a report entitled "Report: Experimental Study of Graphic Cigarette Warning Labels" (Experimental Study Report) and it describes the results from a research study that quantitatively evaluated the relative impact of certain color graphics on consumer attitudes, beliefs, perceptions, and intended behaviors related to cigarette smoking. The purpose of this notice is to provide the public an opportunity to review and comment on the Experimental Study Report.

DATES: Interested persons may submit either electronic or written comments by January 11, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0568, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN). All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie Voss or Kristin Davis, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *gerie.voss@fda.hhs.gov* or *kristin.davis@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act and the Federal Cigarette Labeling and Advertising Act (FCLAA), and providing FDA with the authority to regulate tobacco products (Pub. L. 111–31; 123 Stat. 1776). Section 201 of the Tobacco Control Act modifies section 4

of FCLAA (15 U.S.C. 1333) to require that nine new health warning statements appear on cigarette packages and in cigarette advertisements. Section 201 also states that "the Secretary [of Health and Human Services] shall issue regulations that require color graphics depicting the negative health consequences of smoking" to accompany the nine new health warning statements.

On November 12, 2010, FDA published a proposed rule seeking comment on these new requirements (75 FR 69524). The proposed rule provides a 60-day comment period, which ends January 11, 2011. FDA proposed several options for color graphics that could accompany each of the nine health warning statements required by FCLAA. These documents are available in the docket and on FDA's Web site (*http://www.fda.gov/cigarettewarnings*). FDA seeks comment on these proposed images.

II. Experimental Study

In considering and developing appropriate color graphics depicting the negative health consequences of smoking to accompany the textual warning statements specified in section 4(a)(1) of FCLAA (15 U.S.C. 1333(a)(1)), FDA assessed the graphic warnings that other countries have required for tobacco products, as well as scientific literature studying the impact of graphic warnings on smoking behavior and evaluating the communication effectiveness of such images. FDA worked with various experts in the fields of health communications, marketing research, graphic design, and advertising to develop the required warnings published with the proposed rule. The proposed rule explained that FDA was conducting research to: (1) Measure consumer attitudes, beliefs, and intended behaviors related to cigarette smoking in response to the proposed color graphics and their accompanying textual warning statements; (2) determine whether consumer responses to the proposed color graphics and their accompanying textual warning statements differ across various groups based on smoking status, age, or other demographic variables; and (3) evaluate the relative effectiveness of the proposed color graphics and their accompanying textual warning statements at conveying information about various health risks of smoking, and additionally, at encouraging smoking cessation and discouraging smoking initiation (75 FR 7604 (February 22, 2010); 75 FR 52352 (August 25, 2010)). The proposed rule stated that once the research is complete and final analyses of the results are available, FDA planned to place a report of the results of the analyses in the docket so the public has an opportunity to comment on it.

FDA has now completed this research and analyzed the results. The Experimental Study Report describes FDA's findings and analysis. FDA has placed the Experimental Study Report in the docket for the proposed rule and is providing notice and an opportunity to comment on it.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding the Experimental Study Report and the related rulemaking documents. It is only necessary to send one copy of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 2, 2010.

Margaret A. Hamburg,

Commissioner of Food and Drugs.

[FR Doc. 2010–30685 Filed 12–3–10; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0708, FRL–9235–7]

RIN 2060–AP36

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public meeting.

SUMMARY: On March 3, 2010, EPA published final national emission standards for hazardous air pollutants for existing compression ignition stationary reciprocating internal combustion engines. Subsequently, the Administrator received two petitions for reconsideration concerning one particular issue arising from the final rule. EPA is announcing our reconsideration of and requesting public comment on that one issue. Specifically, while EPA is not proposing at this time any specific changes to our regulations, EPA is requesting comment on our decision to amend the limitations on operation of emergency stationary engines to allow emergency engines to operate for up to 15 hours per year as part of an emergency demand response program. EPA plans to issue a final decision on this issue as expeditiously as possible. EPA is seeking comment only on this issue. EPA will not respond to any comments addressing any other issue or any other provisions of the final rule or any other rule.

DATES: *Comments.* Comments must be received on or before February 7, 2011, or 30 days after date of public meeting if later.

Public Meeting. If anyone contacts us requesting to speak at a public meeting by December 27, 2010, a public meeting will be held on January 6, 2011. If you are interested in attending the public meeting, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a meeting will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0708, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0708. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Meeting: If a public meeting is held, it will be held at EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or an alternate site nearby.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. EPA also relies on documents in Docket ID Nos. EPA–HQ–OAR–2002–0059, EPA–HQ–OAR–2005–0029, and EPA–HQ–OAR–2005–0030, and incorporated those dockets into the record for this action. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; email address *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
- A. What is the source of authority for the reconsideration action?
- B. What entities are potentially affected by the reconsideration action?
- C. What should I consider as I prepare my comments for EPA?

II. Background
III. Discussion of the Issue
IV. Solicitation of Public Comment and Participation
V. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act of 1995
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What is the source of authority for the reconsideration action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What entities are potentially affected by the reconsideration action?

Categories and entities potentially regulated by this action include:

Category	NAICS [1]	Examples of regulated entities
Any industry using a stationary reciprocating internal combustion engine.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	48621	Natural gas transmission.
	211111	Crude petroleum and natural gas production.
	211112	Natural gas liquids producers.
	92811	National security.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria in 40 CFR 63.6585. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Ms. Melanie King, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2008–0708.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

(a) Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.

(c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

(g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

(h) Make sure to submit your comments by the comment period deadline identified.

Docket. The docket number for this action is Docket ID No. EPA–HQ–OAR–2008–0708.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will be posted on the WWW through the Technology Transfer Network Website (TTN Web). Following signature, EPA will post a copy of this action on the TTN's policy and guidance page at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

On March 3, 2010, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for existing stationary compression ignition (CI) reciprocating internal combustion engines (RICE) (75 FR 9648). The final NESHAP for stationary RICE were promulgated under 40 CFR part 63, subpart ZZZZ, which already contained standards applicable to new stationary RICE and some existing stationary RICE. The final CI RICE NESHAP is available at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ab3523.*

Following promulgation of the March 3, 2010, final rule, the EPA Administrator received a petition for reconsideration, dated April 30, 2010, from the Delaware Department of Natural Resources and Environmental Control (DE DNREC) pursuant to section 307(d)(7)(B) of the CAA. The EPA Administrator also received a petition for reconsideration, dated May 27, 2010, from CPower Inc., EnergyConnect Inc., EnerNOC Inc., and Innoventive Power LLC (EnerNOC, *et al.*) pursuant to section 307(d)(7)(B) of the CAA. On August 2, 2010, EPA issued a letter to the counsels for the DE DNREC and EnerNOC, *et al.* granting the petitions for reconsideration and indicating that the Agency would issue a **Federal Register** notice regarding the reconsideration process. This action requests comment on issues raised in the petitions for reconsideration.

In addition to the petitions for reconsideration, one petition for judicial review of the March 3, 2010, final NESHAP for existing stationary CI RICE was filed with the U.S. Court of Appeals for the District of Columbia Circuit by EnerNOC, *et al.* (Doc. No. 10–1090, D.C. Cir). On June 3, 2010, EPA filed an unopposed motion to hold the case in abeyance while the Agency considers the pending administrative petitions for reconsideration. On June 4, 2010, the Court granted EPA's motion and ordered the case held in abeyance pending further order from the Court. The petitions for reconsideration are available for review at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480af3dd6* and *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480afedbd.*

III. Discussion of the Issue

On March 5, 2009, EPA proposed NESHAP for several categories of existing stationary RICE (74 FR 9698). That proposed rule made revisions to 40 CFR part 63, subpart ZZZZ. The pre-existing subpart ZZZZ stated that emergency stationary RICE did not include engines that supply power to an electric grid or otherwise provide power as part of a financial arrangement with another entity. The proposed rule did not change the definition, but specified certain use requirements for existing emergency stationary RICE.

EPA received comments on the proposed rule recommending that emergency stationary RICE be allowed to participate in emergency demand response programs to ensure stability of the electric grid. Based on the comments, EPA determined that it would be appropriate to allow emergency engines to operate as part of emergency demand response programs for a limited number of hours of operation per year in situations where grid failure and a blackout are imminent. EPA included a provision in the March 3, 2010, final rule specifying that emergency engines could be operated for a maximum of 15 hours per year as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined there are emergency conditions that could lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level.

Following promulgation of the final rule, EPA received two petitions for reconsideration regarding the allowance for operation of emergency engines in emergency demand response programs. The petition from DE DNREC requested that EPA reconsider the decision to allow 15 hours of emergency demand response operation for emergency engines because of the adverse impacts of the increased emissions from these engines. According to the DE DNREC, the emergency demand response operation would likely occur on high ozone days, and would undercut the progress Delaware has made in reducing emissions of hazardous air pollutants, nitrogen oxides, volatile organic compounds, and ozone. The DE DNREC also stated that there was insufficient notice that EPA would amend the provisions for stationary emergency engines.

The petition from EnerNOC, *et al.* requested that EPA revise the allowance for emergency demand response operation in the final rule to allow the engines to be operated for a maximum of 60 hours per year or the minimum hours required by the Independent System Operator (ISO) tariff, whichever is less. In the opinion of EnerNOC, *et al.,* the final rule may prevent emergency engines from participating in emergency demand response programs since the engines may not be able to meet ISO tariff requirements that specify minimum hours of availability to participate. According to the petition from EnerNOC, *et al.,* emergency engines have historically been called to operate for emergency demand response on a very limited basis. The EnerNOC, *et al.* petition provided a summary of the historical usage of engines in emergency demand response programs. The petitioners were of the opinion that emergency demand response programs provide a benefit to the environment by preventing rotating or wholesale blackouts, which would result in the operation of all emergency engines in the affected area.

IV. Solicitation of Public Comment and Participation

EPA seeks full public participation in arriving at its final decisions. At this time EPA is not proposing any specific revisions to our regulations allowing 15 hours for emergency stationary RICE in emergency demand response programs in the final NESHAP for stationary RICE. However, EPA requests public comment on the regulations delineating the allowance to assess whether those regulations should be revised. EPA requests comment on whether or not engines should be allowed to participate in emergency demand response programs, while keeping their status as emergency engines under the regulations, and if they are allowed to participate, what, if any, limitations should be placed on the operation of emergency engines in emergency demand response programs. EPA specifically requests comment on whether emergency engines in emergency demand response programs should be limited to use during periods in which the regional transmission organization or equivalent balancing authority and transmission operator directs the implementation of operating procedures for voltage reductions of 5 percent of normal operating voltage requiring more than 10 minutes to implement, voluntary load curtailments by customers, or automatic or manual load-shedding, in response to, or to prevent the occurrence of, unusually low frequency, equipment overload, capacity or energy deficiency, unacceptable voltage levels, or other such emergency conditions. EPA also requests comment on whether the limitation on use should be for periods in which the regional transmission authority or equivalent balancing authority has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergency.

EPA is also requesting information on whether the operation of these engines in emergency demand response programs is needed to ensure the stability of the electric grid. EPA is seeking comment on whether the costs for meeting the requirements for non-emergency engines would prevent these engines from taking part in emergency demand response programs.

In addition, EPA is requesting information on the environmental impact of the operation of these engines. EPA is interested in information on the typical frequency and duration of the operation of these engines in emergency demand response programs and whether their operation tends to occur on high ozone days.

EPA recently published a notice of proposed rulemaking to revise portions of the New Source Performance Standards for Stationary Compression Ignition and Stationary Spark Ignition Internal Combustion Engines. 75 FR 32612 (June 8, 2010). In that action, EPA proposed revising the definition and use restrictions on emergency stationary internal combustion engines in 40 CFR part 60, subparts IIII and JJJJ, to correspond to the definition of emergency RICE and the restrictions on emergency RICE finalized in the March 3, 2010, final NESHAP for existing stationary CI RICE. Therefore, the comments received on this issue in both proceedings may be relevant to one another.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA is not proposing any new information collection activities (e.g., monitoring, reporting, recordkeeping) as part of this action. With this action, EPA is seeking additional comments on one aspect of the final NESHAP for existing stationary CI RICE (75 FR 9648, March 3, 2010). The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0548. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action seeks comment on one aspect of the final NESHAP for existing stationary CI RICE without proposing any changes to the rule, and it does not impose any new requirements.

D. Unfunded Mandates Reform Act of 1995

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action 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. This action requests comment on one aspect of the final NESHAP for existing stationary CI RICE without proposing any changes to the rule

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 seeks comment on one aspect of the final NESHAP for existing stationary CI RICE without proposing any changes to the rule. 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 will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority or low-income populations.

EPA has determined that this action 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 action seeks comment on one aspect of the final NESHAP for existing stationary CI RICE without proposing any changes to the rule.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Dated: November 30, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–30627 Filed 12–6–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1164]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 7, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1164, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
St. Lucie County, Florida, and Incorporated Areas				
Canal 8	At the confluence with Fivemile Creek	None	+12	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
	Approximately 1,385 feet upstream of Summit Street	None	+18	
Fivemile Creek	At Peterson Road	None	+16	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
	Approximately 0.5 mile upstream of Peterson Road	None	+16	
Howard Creek	Approximately 1,635 feet downstream of Southeast Ballantrae Boulevard.	None	+6	City of Port St. Lucie, Unincorporated Areas of St. Lucie County.
	Approximately 0.6 mile upstream of Southeast Westmoreland Boulevard.	None	+13	
Ponding Area	Ponding area bounded by Virginia Park Boulevard to the north, west, and south, and South 35th Street to the east.	None	+15	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	None	+15	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 29th Street to the west, Cortez Boulevard to the south, and Placid Avenue to the east..	None	+16	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Royal Palm Drive to the north, South 25th Street to the west, Cortez Boulevard to the south, and South 19th Street to the east.	None	+17	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Cortez Boulevard to the north, South 25th Street to the west, Edwards Road to the south, and Admiral Street to the east.	None	+17	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Arnold Road to the north, Fivemile Creek to the west, Kirby Loop Road to the south, and Virginia Park Boulevard to the east.	None	+14	City of Fort Pierce.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	None	+16	City of Fort Pierce.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	None	+17	City of Fort Pierce.
Ponding Area	Ponding area bounded by Linda Sue Circle to the north, west, south, and east.	None	+17	City of Fort Pierce.
Tenmile Creek Tributary	At McCarty Road	None	+19	City of Port St. Lucie, Unincorporated Areas of St. Lucie County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,400 feet upstream of Newell Road ...	None	+21	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Fort Pierce
Maps are available for inspection at City Hall, 100 North U.S. Highway 1, Fort Pierce, FL 34950.

City of Port St. Lucie
Maps are available for inspection at City Hall, 121 Southwest Port St. Lucie Boulevard, Port St. Lucie, FL 34984.

Unincorporated Areas of St. Lucie County
Maps are available for inspection at the St. Lucie County Building Department, 2300 Virginia Avenue, Fort Pierce, FL 34982.

Wayne County, Michigan (All Jurisdictions)

McClaughrey Drain	Just downstream of Van Born Road	None	+662	City of Romulus, City of Wayne, Township of Van Buren.
	Just downstream of I–275 North	None	+669	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Romulus
Maps are available for inspection at 11111 Wayne Road, Romulus, MI 48174.

City of Wayne
Maps are available for inspection at 4001 South Wayne Road, Wayne, MI 48184.

Township of Van Buren
Maps are available for inspection at 46425 Tyler Road, Van Buren Township, MI 48111.

Harris County, Texas, and Incorporated Areas

K100–00–00 (Cypress Creek).	Approximately 0.57 mile downstream of Treaschwig Road.	+78	+79	City of Houston, Unincorporated Areas of Harris County.
	Approximately 1.1 miles upstream of the Waller County boundary.	+172	+173	
K111–00–00 (Turkey Creek)	Approximately 1,100 feet downstream of Hardy Toll Road.	+91	+90	Unincorporated Areas of Harris County.
	Approximately 650 feet upstream of North Vista Drive	+104	+105	
K116–00–00 (Schulz Gully) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+84	+85	Unincorporated Areas of Harris County.
	Approximately 920 feet downstream of Aldine Westfield Road.	+84	+85	
K120–00–00 (Lemm Gully) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+91	+92	Unincorporated Areas of Harris County.
	Approximately 0.4 mile upstream of Lockridge Drive ..	+91	+92	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
K120–01–00 (Senger Gully) (backwater effects from Cypress Creek).	At the confluence with Lemm Gully	+91	+92	City of Houston, Unincorporated Areas of Harris County.
	Approximately 100 feet upstream of I–45	+91	+92	
K124–00–00 (Seals Gully)	Approximately 1,400 feet downstream of Candle Creek Road.	+101	+102	Unincorporated Areas of Harris County.
	Approximately 500 feet upstream of Spring Cypress Road.	+124	+125	
K131–00–00 (Spring Gully)	At the confluence with Cypress Creek	+108	+106	Unincorporated Areas of Harris County.
	Approximately 200 feet downstream of Spring Cypress Road.	+136	+137	
K131–03–03 (Tributary 2.1 to Spring Gully) (backwater effects from Spring Gully).	At the confluence with Spring Gully	+114	+112	Unincorporated Areas of Harris County.
	Just upstream of T.C. Jester Boulevard	+114	+112	
K131–04–00 (Tributary to Spring Gully) (backwater effects from Spring Gully).	At the confluence with Spring Gully	+123	+121	Unincorporated Areas of Harris County.
	Approximately 1,600 feet upstream of the confluence with Spring Gully.	+123	+122	
K133–00–00 (Dry Gully) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+113	+112	Unincorporated Areas of Harris County.
	Approximately 400 feet upstream of Champions Forest Drive.	+113	+112	
K140–00–00 (Pillot Gully) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+119	+118	Unincorporated Areas of Harris County.
	Just downstream of River Park Drive	+119	+118	
K142–00–00 (Faulkey Gully)	At the confluence with Cypress Creek	+124	+122	Unincorporated Areas of Harris County.
	Just downstream of Lakewood Forest Drive	+124	+123	
K145–00–00 (Dry Creek) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+140	+139	Unincorporated Areas of Harris County.
	Just downstream of Jarvis Road	+140	+139	
K152–00–00 (Tributary 37.1 to Cypress Creek).	Approximately 1,500 feet upstream of the confluence with Cypress Creek.	+149	+148	Unincorporated Areas of Harris County.
	Approximately 920 feet downstream of U.S. Route 290.	+153	+151	
K155–00–00 (Tributary 40.7 to Cypress Creek).	At the confluence with Cypress Creek	+156	+158	Unincorporated Areas of Harris County.
	Approximately 1,580 feet downstream of U.S. Route 290.	+198	+197	
K157–00–00 (Tributary 42.7 to Cypress Creek).	At the confluence with Cypress Creek	+159	+163	Unincorporated Areas of Harris County.
	Approximately 2 miles upstream of Jack Road	+197	+196	
K159–00–00 (Channel A to Cypress Creek) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+150	+151	Unincorporated Areas of Harris County.
	Approximately 1,900 feet upstream of the confluence with Cypress Creek.	+150	+151	
K160–00–00 (Rock Hollow)	At the confluence with Cypress Creek	+161	+163	Unincorporated Areas of Harris County.
	Approximately 980 feet upstream of Mound Road	+207	+206	
K160–01–00 (Tributary 1.63 to Rock Hollow).	Approximately 0.6 mile upstream of the confluence with Rock Hollow.	+167	+166	Unincorporated Areas of Harris County.
	Approximately 2.8 miles upstream of the confluence with Rock Hollow.	+193	+192	
K185–00–00 and K172–00–00 (Tributary 44.5 to Cypress Creek).	At the Cypress Creek confluence with K185–00–00	+164	+166	Unincorporated Areas of Harris County.
	Approximately 0.7 mile downstream of Mound Road	+208	+206	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
L100–00–00 (Little Cypress Creek) (backwater effects from Cypress Creek).	At the confluence with Cypress Creek	+131	+130	Unincorporated Areas of Harris County.
	Approximately 1,500 feet upstream of the confluence with Cypress Creek.	+131	+130	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Houston

Maps are available for inspection at the Floodplain Management Office, 3300 Main Street, 1st Floor, Houston, TX 77002.

Unincorporated Areas of Harris County

Maps are available for inspection at the Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 23, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–30609 Filed 12–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1168]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 7, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1168, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Skagit County, Washington, and Incorporated Areas				
Left Bank Overflow Main Stem Skagit River.	Approximately 1,400 feet north of the intersection of Hickox Road and I–5.	#2	+23	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 300 feet west of the intersection of Anderson Road and Old Highway 99.	#2	+24	
Left Bank Overflow Main Stem Skagit River.	Approximately 0.43 mile east of the intersection of Dike Road and Britt Road.	+19	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 1,500 feet west of the intersection of Riverview Lane and Dike Road.	+19	+27	
Left Bank Overflow Main Stem Skagit River.	Just northwest of the intersection of Britt Road and Dike Road.	#3	+26	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 250 feet north of Dike Road and approximately 1,000 feet west of Riverview Lane.	#3	+28	
Left Bank Overflow Main Stem Skagit River.	Approximately 900 feet north of Blackburn Road between 2nd Street and 3rd Street.	#1	+25	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of Freeway Drive and Cameron Way.	#1	+39	
Left Bank Overflow Main Stem Skagit River.	Just north of Stewart Road between Riverside Drive and the Burlington Northern Railroad.	#3	+41	City of Mount Vernon.
	Just northwest of the intersection of Hoag Road and the Burlington Northern Railroad.	#3	+42	
Left Bank Overflow Main Stem Skagit River.	Approximately 1.4 miles west of the intersection of I–5 and State Route 538, at levee.	+34	+40	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of the Burlington Northern Railroad and State Route 538.	+34	+40	
Left Bank Overflow Main Stem Skagit River.	Just north of the intersection of Hickox Road and Dike Road.	None	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 640 feet west of the intersection of Riverview Lane and Dike Road.	None	+27	
Left Bank Overflow Main Stem Skagit River.	At the intersection of I–5 and Anderson Road	None	+24	City of Mount Vernon.
	At the intersection of I–5 and Section Street	None	+28	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Just north of Fir Island Road, at the intersection with the Burlington Northern Railroad.	#3	+20	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 500 feet south of Hickox Road between the levee and the Burlington Northern Railroad.	#3	+23	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Approximately 0.75 mile south of the intersection of Milltown Road and Pioneer Highway.	+13	+16	Unincorporated Areas of Skagit County.
	At the intersection of State Route 534 and I–5	+13	+20	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Left Bank Overflow North Fork Skagit River.	Just east of the levee, approximately 350 feet northeast of the intersection of Moore Road and Polson Road.	#1	+16	Unincorporated Areas of Skagit County.
	Just east of the levee, approximately 450 feet north of Moore Road.	#1	+18	
Main Stem Skagit River	At the confluence with the North Fork Skagit River and South Fork Skagit River.	+27	+30	City of Burlington, City of Mount Vernon, City of Sedro-Woolley, Town of La Conner, Unincorporated Areas of Skagit County.
	Just downstream of the Burlington Northern Railroad ...	+49	+52	
North Fork Skagit River	At the confluence with Skagit Bay	+14	+16	Unincorporated Areas of Skagit County.
	At the confluence with the Main Stem Skagit River and South Fork Skagit River.	+27	+30	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River.	At the confluence with Skagit Bay	+12	+14	Unincorporated Areas of Skagit County.
	At the intersection of Moore Road and Dry Slough Road.	+13	+18	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River Padilla Bay.	Approximately 200 feet north of Moore Road between the North Fork Skagit River and Dry Slough Road.	#3	+18	Unincorporated Areas of Skagit County.
	Approximately 880 feet southwest of the confluence with North Fork Skagit River and the South Fork Skagit River.	#3	+21	
	Approximately 1,000 feet northwest of the intersection of Highway 20 and Padilla Heights Road.	None	+13	Swinomish Indian Tribal Community.
	Approximately 100 feet north of the crossing at State Route 20 and the Swinomish Channel.	None	+13	
Right Bank Overflow Main Stem Skagit River.	Approximately 0.36 mile west of the intersection of Penn Road and Calhoun Road.	#3	+21	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 400 feet south of the levee between Moores Garden Road and Baker Street.	#3	+30	
Right Bank Overflow Main Stem Skagit River.	Approximately 300 feet north of the intersection of Dunbar Avenue and Avon Allen Road.	#3	+24	Unincorporated Areas of Skagit County.
	Aproximately 500 feet east of Avon Allen Road between Bennett Road and State Route 536.	#3	+31	
Right Bank Overflow Main Stem Skagit River.	Approximately 400 feet northeast of the intersection of Bennett Road and State Route 536.	#3	+25	Unincorporated Areas of Skagit County.
	Approximately 500 feet southeast of the intersection of Bennett Road and Silver Lane.	#3	+34	
Right Bank Overflow Main Stem Skagit River.	Approximately 400 feet west of the intersection of Pulver Road and McCorquedale Road.	#3	+32	Unincorporated Areas of Skagit County.
	Approximately 400 feet east of Pulver Road between Whitemarsh Road and McCorquedale Road.	#3	+34	
Right Bank Overflow Main Stem Skagit River/North Fork Skagit River Right Bank Overflow North Fork Skagit River.	At Kamb Road approximately 0.47 mile south of Calhoun Road.	#3	+19	Unincorporated Areas of Skagit County.
	Approximately 0.38 mile southeast of the intersection of Calhoun Road and Kamb Road.	#3	+20	
	Just south of Kamb Road approximately 0.66 mile east of Beaver Marsh Road.	#3	+19	Unincorporated Areas of Skagit County.
	Approximately 1,600 feet east of the intersection of Beaver Marsh Road and Marsh Road.	#3	+19	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Right Bank Overflow South Fork Skagit River Samish Bay.	Between Moore Road and Polson Road Approximately 870 feet south of Moore Road, at levee.	#1 #1	+17 +18	Unincorporated Areas of Skagit County.
	At the intersection of Chuckanut Drive and South Blanchard Drive.	+12	+13	Unincorporated Areas of Skagit County.
Samish Bay/Padilla Bay Simlik Bay.	At the intersection of Bayview-Edison Road and Samish Island Road.	+12	+13	Unincorporated Areas of Skagit County.
	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	Swinomish Indian Tribal Community.
	Approximately 100 feet southwest of the intersection of Reservation Road and Simlik Bay Road.	None	+12	
Skagit Bay	Approximately 0.36 mile northwest of the intersection of Pioneer Highway and Milltown Road.	+15	+14	Unincorporated Areas of Skagit County.
	At the confluence of Ishois Slough and Tom Moore Slough.	+17	+14	
Skagit Bay	Approximately 200 feet northwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+12	Swinomish Indian Tribal Community.
	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	
Skagit Bay	Approximately 400 feet northwest of Pull and Be Damned Point Road.	None	+14	Swinomish Indian Tribal Community.
	Approximately 200 feet southwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+14	
Skagit Bay/Swinomish Channel.	Approximately 600 feet southwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+12	Swinomish Indian Tribal Community.
	Approximately 400 feet west of Pull and Be Damned Point Road.	None	+12	
Skagit River	Just upstream of the Burlington Northern Railroad	+49	+52	City of Sedro-Woolley, Town of Concrete, Town of Hamilton, Town of Lyman, Unincorporated Areas of Skagit County.
	Approximately 1.0 mile upstream of the confluence with the Baker River.	+197	+198	
Skagit River Delta Overbank Flowpath 1.	Just upstream of Pulver Road	+27	+32	City of Burlington, Unincorporated Areas of Skagit County.
	Approximately 1,170 feet southeast of the intersection of Lafayette Road and Peter Anderson Road.	+45	+46	
Skagit River Delta Overbank Flowpath 2 Skagit River Delta Overbank Flowpath 3.	At the confluence with Samish Bay	+12	+13	Unincorporated Areas of Skagit County.
	Just downstream of Pulver Road	+27	+32	
	At the confluence with the Swinomish Channel	+12	+15	Town of La Conner, Unincorporated Areas of Skagit County.
	Just downstream of Pulver Road	+27	+32	
South Fork Skagit River	At the confluence with Ishois Slough and Tim Moore Slough.	+17	+14	Unincorporated Areas of Skagit County.
	At the confluence with the Main Stem Skagit River and the North Fork Skagit River.	+27	+30	
Swinomish Channel	Just north of Highway 20	None	+11	Swinomish Indian Tribal Community.
	Approximately 600 feet northwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+11	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Burlington
Maps are available for inspection at 900 East Fairhaven Avenue, Burlington, WA 98233.

City of Mount Vernon
Maps are available for inspection at 910 Cleveland Avenue, Mount Vernon, WA 98273.

City of Sedro-Woolley
Maps are available for inspection at 720 Murdock Street, Sedro-Woolley, WA 98284.

Swinomish Indian Tribal Community
Maps are available for inspection at 11404 Moorway Way, La Conner, WA 98257.

Town of Concrete
Maps are available for inspection at 45672 Main Street, Concrete, WA 98237.

Town of Hamilton
Maps are available for inspection at 584 Maple Street, Hamilton, WA 98255.

Town of La Conner
Maps are available for inspection at 204 Douglas Street, La Conner, WA 98257.

Town of Lyman
Maps are available for inspection at 8224 South Main Street, Lyman, WA 98263.

Unincorporated Areas of Skagit County
Maps are available for inspection at 1800 Continental Place, Mount Vernon, WA 98273.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 23, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–30613 Filed 12–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1161]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 7, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1161, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Cheboygan County, Michigan, and Incorporated Areas				
Black Lake	Entire shoreline within community	None	+616	Township of Waverly.
Black River	Approximately 2.69 miles downstream of North Black River Road.	None	+612	Township of Aloha.
	Approximately 1.13 miles downstream of North Black River Road.	None	+613	
Lake Huron	Entire shoreline within community	None	+583	Township of Beaugrand, Township of Benton, Township of Mackinaw.

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Aloha
Maps are available for inspection at the Aloha Township Hall, 3012 North M–33, Cheboygan, MI 49721.

Township of Beaugrand
Maps are available for inspection at the Beaugrand Township Hall, 1999 Old Mackinaw Road, Cheboygan, MI 49721.

Township of Benton
Maps are available for inspection at the Benton Township Hall, 5012 Orchard Beach Road, Cheboygan, MI 49721.

Township of Mackinaw
Maps are available for inspection at the Mackinaw Township Hall, 1095 Wallick Road, Mackinaw City, MI 49701.

Township of Waverly
Maps are available for inspection at the Waverly Township Hall, 11133 Twin School Road, Onaway, MI 49765.

Mille Lacs County, Minnesota, and Incorporated Areas				
Mille Lacs Lake	Entire shoreline within community	None	+1254	City of Wahkon, Unincorporated Areas of Mille Lacs County.
Rum River (Lower Reach)	Approximately 2.25 miles downstream of State Highway 95.	None	+962	Unincorporated Areas of Mille Lacs County.
	Approximately 0.82 mile upstream of State Highway 95.	None	+967	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Wahkon

Maps are available for inspection at City Hall, 151 2nd Street East, Wahkon, MN 56386.

Unincorporated Areas of Mille Lacs County

Maps are available for inspection at the Mille Lacs County Courthouse Annex, 246 6th Avenue Southeast, Milaca, MN 56353.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 19, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–30615 Filed 12–6–10; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 75, No. 234

Tuesday, December 7, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

U.S. Agency for International Mandatory Declassification Review Address

AGENCY: U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: Pursuant to the Information Security Oversight Offices Classified National Security Information Directive No. 1, this notice provides the U.S. Agency for International Developments address to which Mandatory Declassification Review requests may be sent. This notice benefits the public in advising them where to send such requests for declassification review.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Lankford, 202–712–0879.

SUPPLEMENTARY INFORMATION: The following identifies the office to which mandatory declassification review requests should be addressed: Acting Chief, Information and Records Division (M/MS/IRD), Office of Management Services, U.S. Agency for International Development, Ronald Reagan Building, Room 207C, Washington, DC 20523–2700.

Dated: November 29, 2010.

Lynn P. Winston,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

[FR Doc. 2010–30521 Filed 12–6–10; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 2, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Blood and Tissue Collection at Slaughtering Establishments.

OMB Control Number: 0579–0212.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pest or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Veterinary Services, a program within USDA's Animal and Plant Health Inspection Service (APHIS), administers regulations governing the interstate movement of animals to prevent the dissemination of animal disease within the United States. These regulations are contained in title 9 CFR, subchapter C, Interstate Transportation of Animals (including poultry) and Animal Products, part 71. The regulations also address animal testing for disease surveillance. APHIS will collect information using VS form 10–4 and 10–4A, Specimen Submission Form and Supplemental Sheet and VS form 10–5, Facility Inspection Report.

Need and Use of the Information: APHIS will collect information to identify specimens (blood and tissue) submitted for laboratory analysis and to identify the individual animal from which the specimen was taken as well as the animal's herd or flock; the type of specimen submitted, and the purpose for submitting the specimen. Without the information contained on the form, personnel at the National Veterinary Services Laboratories or other Federal laboratories would have no way of identifying or processing the specimens being sent to them for analysis.

Description of Respondents: Business or other for-profit.

Number of Respondents: 66.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,691.

Animal and Plant Health Inspection Service

Title: Phytophthora Ramorum; Quarantine and Regulations.

OMB Control Number: 0579–0310.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pest new to the United States or not widely distributed throughout the United States. Under "Subpart—Phytophthora Ramorum" (7 CFR 301.92 through 301.92–12, referred to as the regulation), USDA's Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain regulated and restricted articles from quarantined areas in California and Oregon to prevent the artificial spread of Phytophthora ramorum, the pathogen

that causes the plant disease commonly known as sudden oak death, ramorum left blight, and ramorum dieback.

Need and Use of the Information: APHIS will collect information through a compliance agreement to establish restrictions on the interstate movement of nursery stock from nurseries in non-quarantined counties in California, Oregon, and Washington. If California, Oregon, and Washington State did not comply with provisions by signing a compliance agreement, *P. ramorum* would have the potential to spread to eastern forests adversely impacting the ecosystem balances, foreign/domestic nursery stocks, and lumber markets.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,425.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,263.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–30642 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 2, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements for 7 CFR part 29.

OMB Control Number: 0581–0056.

Summary of Collection: The Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518) eliminated price supports and marketing quotas for all tobacco beginning with the 2005 crop year. Mandatory inspection and grading of domestic and imported tobacco was eliminated as well as the mandatory pesticide testing of imported tobacco and the tobacco Market News Program. The Tobacco Inspection Act (U.S.C. 511) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. Provision is also made for interested parties to request inspection, pesticide testing and grading services on an "as needed" basis.

Need and Use of the Information: Information is collected through various forms and other documents for the inspection and certification process. Upon receiving request information from tobacco dealers and/or manufacturers, tobacco inspectors will pull samples and apply U.S. Standard Grades to samples to provide a Tobacco Inspection Certificate (TB–92). Also, samples can be submitted to a USDA laboratory for pesticide testing and a detailed analysis is provided to the customer.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 3,851.

Agricultural Marketing Service

Title: USDA Food Connect Web site.

OMB Control Number: 0581–0224.

Summary of Collection: The USDA Food Connect Web site (previously known as the USDA Food and Commodity Connection Web site) operates pursuant to the authority of Section 32 of Public Law 320, Section 8 of the Child Nutrition Act of 1966 (42 U.S.C. 1777) and the National School Lunch Program, 7 CFR part 210. It was developed to assist the institutional food service community across the United States. The Web site focuses on providing information to institutional food service professions, as well as providing a platform for processors, distributors, and brokers to post information about their processed USDA supplied commodities and other commercial food products available for institutional food service purchase. The USDA Food Connect Web site provides food related associations a location to provide information on services and materials available from the organization. The Web site is a public Web site and the information provided is considered as public information.

Need and use of the Information: The USDA Food Connect Web site will collect all information electronically at one time upon registration. Each new user must create their individual login and password. There are five types of users; institutional food service professionals, processors, distributors, brokers and food related associations. The Food Connect Web site is designed as a central location in which institutional food service professionals, who provide meals in institutional settings, can locate processors who manufacture foods utilizing USDA provided commodities, distributors who distribute the manufactured food, brokers who represent the processors, and food related associations. No information is collected from a user when they access the Web site as a guest.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 850.

Frequency of Responses: Reporting: Other (One Time).

Total Burden Hours: 280.

Agricultural Marketing Service

Title: Domestic Origin Verification System Questionnaire and Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

OMB Control Number: 0581–0234.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Department to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. The voluntary inspection and grading services of processed fruits and vegetables are on a fee for service basis. The collection of

information regarding the requirement for companies to ensure domestic origin of the products they deliver to the USDA Purchase Program is provided for in the "General Terms and Conditions for Procurement of Agricultural Commodities of Services," (USDA–1). The Domestic Origin Verification System Program (DOVS) is a voluntary audit and verification user-fee service available to suppliers, processors, and any financially interested party. It is designed to provide validation of the applicant's domestic origin verification system prior to bidding on contracts to supply food products to the Department's Feeding programs, and/or may be conducted after a contract is awarded. Participation in DOVS does not relieve a company of its contractual requirements to provide only domestic origin product to the USDA.

Need and use of the Information: the Agricultural Marketing Services uses various forms to collect data for grading and certification purposes and for hiring licensed samplers. The information collected is used to hire prospective employees desiring to become licensed to sample processed foods and to certify as to the identification, location, kinds and condition of containers of processed products that are sampled.

An interested company requests a DOVS questionnaire, and once completed it contains the applicant's procedures to ensure fruit, nut or vegetable components or products can be traced back to their domestic origin; use of a segregation plan to keep all non-domestic components or products separate from domestic products; for taking corrective action on nonconformities and deficiencies; for checking the adequacy of their internal system of ensuring domestic origin; instructing employees in the domestic origin requirement and for maintaining records relating to the applicant's domestic origin verification system. These elements should be in place whether or not the applicant is on the DOVS program or providing a trace-back on every contract. DOVS assists companies to meet the domestic origin requirement for the USDA Purchase Program efficiently and eliminates the redundancy of the trace paperwork that is required for every USDA contract.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,160.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,192.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–30648 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 1, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Cotton Classing, Testing, and Standards.

OMB Control Number: 0581–0008.

Summary of Collection: The U.S. Cotton Standards Act, 7 U.S.C. 51 53 and 55, authorizes the USDA to supervise the various activities directly associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The Cotton Program of the Agricultural Marketing Service carries out this supervision and is responsible for the maintenance of the functions to which these forms relate. USDA is the only Federal agency authorized to establish and promote the use of the official cotton standards of the U.S. in interstate and foreign commerce and to supervise the various activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA standards.

Need and Use of the Information: The Agricultural Marketing Service uses the following forms to collection information:

Form FD–210 is submitted by owners of cotton to request cotton classification services. The request contains information for USDA to ascertain proper ownership of the samples submitted, to distribute classification results, and bill for services. Information about the origin and handling of the cotton is necessary in order to properly evaluate and classify the samples.

Form CN–246 is submitted by cotton gins and warehouses seeking to serve as licensed samplers. Licenses issued by the USDA–AMS Cotton Program authorize the warehouse/gin to draw and submit samples to insure the proper application of standards in the classification of cotton and to prevent deception in their use.

Form CN–383 is a package of forms designated as CN–383–a through CN–383–k that is submitted by cotton producers, ginners, warehousemen, cooperatives, manufacturers, merchants, and crushers interested in acquiring cotton classification standards and round testing services.

Description of Respondents: Business or other for-profit.

Number of Respondents: 530.

Frequency of Responses: Reporting: Annually; on occasion.

Total Burden Hours: 136.

Agricultural Marketing Service

Title: Cotton Classification and Market News Service.

OMB Control Number: 0581–0009.

Summary of Collection: The Cotton Statistics and Estimates Act, 7 U.S. Code 471–476, authorizes the Secretary of Agriculture to collect and publish annually statistics or estimates concerning the grades and staple lengths

of stocks of cotton. In addition, Agricultural Marketing Service (AMS) collects, authenticates, publishes, and distributes timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B). This information is needed and used by all segments of the cotton industry.

Need and Use of the Information: AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. AMS and other government agencies are users of the compiled information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 725.

Frequency of Responses: Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 770.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581–0031.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors by prohibiting unfair practices. PACA requires nearly all persons who operate as commission merchants, dealers and brokers buying or selling fruit and or vegetables in interstate or foreign commerce to be licensed. The license for retailers and grocery wholesalers is effective for three years and for all other licensees up to three years, unless withdrawn.

Need and Use of the Information: Using various forms, AMS will collect information from the applicant to administer licensing provisions under the Act, to adjudicate contract disputes, and for the purpose of enforcing the PACA and its regulations. If this information were unavailable, it would be impossible to identify and regulate those individuals or firms that are restricted due to sanctions imposed because of the reparation or administrative actions.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 14,492.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 87,328.

Agricultural Marketing Service

Title: Reporting Forms under Milk Marketing Order Programs.

OMB Control Number: 0581–0032.

Summary Of Collection: Agricultural Marketing Service (AMS) oversees the administration of the Federal Milk Marketing Orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended. The Act is designed to improve returns to producers while protecting the interests of consumers. The Federal Milk Marketing Order regulations require places certain requirements on the handling of milk in the area it covers. Currently, there are 10 milk marketing orders regulating the handling of milk in the respective marketing areas.

Need and Use of the Information: The information collected is needed to administer the classified pricing system and related requirements of each Federal Order. Forms are used for reporting purposes and to establish the quantity of milk received by handlers, the pooling status of the handler, and the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk. Without the monthly information, the market administrator would not have the information to compute each monthly price nor know if handlers were paying producers on dates prescribed in the order. Penalties are imposed for violation of the order, such as the failure to pay producers by the prescribed dates.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Individuals or households; Farms.

Number of Respondents: 740.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

Total Burden Hours: 22,315.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–30531 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0108]

Notice of Request for Extension and Revision of a Currently Approved Information Collection for Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension and revision of a currently approved information collection that will combine a number of forms issued under inspection and grading services under the Agricultural Marketing Act of 1946 and section 8e of the Agricultural Marketing Agreement Act of 1937. AMS is combining all burden hours with submission.

DATES: Comments may be submitted on or before February 7, 2011.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit comments. Comments must be sent to Myron Betts, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; Phone (202) 720–9906; fax (202) 690–1527; or can be submitted to *http://www.regulations.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the above office during regular business hours. Please be advised that all comments submitted in response to this notice will be included in the record and will be made available to the public on the Internet via *http://www.regulations.gov.* Also, the identity of the individuals or entities submitting the comments will be made public.

SUPPLEMENTARY INFORMATION:

Title: "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR Part 52".

OMB Number: 0581–0123.

Expiration Date of Approval: Three years from date of approval.

Type of Request: Request for extension and revision of currently approved information collection, the

addition of two new forms, and revision of one form.

Abstract: Currently approved information collection.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Department of Agriculture (USDA) to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. Section 203(h) of the Act specifically directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The grading and certification of processed fruit and vegetable services under 7 CFR Part 52 contains provisions for the collection of fees from users of the Processed Product Branch services that equal the cost of providing the requested services to the closest extent possible. In order for the Agency to satisfy those requests for service, the Agency must request certain information from those who apply for service. An application for service is a request for AMS to perform such services and requests such information as the applicant's name, address, and product to be inspected. AMS also provides other types of voluntary services under the same regulations, e.g., contract and specification acceptance services, facility assessment services, certifications of quantity and quality, import product inspections, and export certification.

Affected public may include any partnership, association, business trust, corporation, organized group, and state, county or municipal government, and any authorized agent that has a financial interest in the commodity involved and requests service.

Estimate of Burden: Public reporting burden for this collection including the additional two new forms, and the revised form is estimated to average 0.33 hours per response. (6,161 total hours divided by 18,812 total annual responses).

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 1,142.

Estimated Number of Responses: 18,812.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 6,167.

The following are two new forms to be added to this information collection: Form FV–16, Notice for Hold for Re-Examination and FV–358, Request for Surety Bond.

Notice for Hold for Re-Examination (FV–16)

When foreign material or Grade Not Certified (GNC) product is found in an original sample submitted for inspection in excess of AMS requirements or the Food and Drug Administration's (FDA) defect action levels, an inspector will notify an applicant and make arrangements with the applicant for re-examination, if desired. The top part of Form FV–16 is completed by the inspector.

Each "hold" lot must be conspicuously marked and distinguished from other lots as to code mark(s) and location when recording information on inspection documents, so that the lot may be easily found and identified. If the applicant disposes of GNC product immediately, Form FV–16 is not issued, and inspection records are marked accordingly.

Applicants have a number of options available, such as, segregation, reworking, destruction, or disposal for non-food use under AMS supervision. The option taken is reported to the inspector within two weeks from the date shown on the FV–16. The applicant indicates their desired option on the FV–16 form, and dates and signs the form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response (1 total hour divided by 12 total annual responses).

Respondents: Applicants who use grading and inspection services.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 12.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.

Request for Surety Bond (FV–358)

The information collected on the "Request for Surety Bond" form assures the inspection service that fees and charges for any inspection service are paid by the interested party making the application for such service in accordance with the applicable provisions of the regulation. The inspection service payments are guaranteed by either an advance of funds prior to rendering inspection service or a suitable surety bond. Applicants that enter into a contract or an agreement for inspection service must provide acceptable surety. Form FV–358 sets forth the agreement for surety and provides for the amount to be paid.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.20 hours per response (5.0 total hours divided by 25 total annual responses).

Respondents: Applicants who request grading and inspection services.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Application for Inspection and Certification of Sampling (FV–356)

Form FV–356 is revised to include additional data required for inspection of products and services and combined under the same OMB control number. These include export certification, inspection of section 8e import products, and applicant submittal of unofficial samples.

The revised form includes additional data elements for section 8e import product inspection. The information required for this type of inspection pertains to imported canned ripe olives, raisins, and dates which are required to be inspected by AMS, subject to exemptions listed in the applicable Marketing Orders, Import Regulations (7 CFR parts 944.401, 999.300, and 999.1). Section 8e regulations are issued under section 608e–1 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1). The revised request includes such information as: Importer of record; port of entry; name of vessel, container number, country of origin, customs entry number, bill of lading number, broker reference number, date of entry, harmonized tariff code, consignee number, and Food Canning Establishment (FCE) Number obtained from the FDA.

The revised application also includes information collected for the inspection of unofficially submitted samples of food products. This was previously Form FV–159 on the previous collection of OMB 581–0123. Form FV–159 will become obsolete as a result of the revision of this form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours per response (6,124 total hours divided by 18,560 total annual responses).

Respondents: Applicants requesting grading and inspection services.

Estimated Number of Respondents: 1,160.

Estimated Number of Responses: 18,560.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,124.

Application for License to Sample Processed Foods (FV–468)

The information collected is used to subcontract applicants desiring to sample processed foods and certify as to the identification, location, and condition of containers of the processed products that are sampled. The information at the top of the form (application) is intended as a general guide that indicates what is to be expected of the applicant, if the applicant is hired.

FV–468 provides for a listing of previous employers who may be contacted for references and for determining length of service benefits when the employer is either a Federal or State agency. A review of the applicant's previous duties provides USDA with an indication of his or her ability to perform the job functions. The applicant's signature on the bottom of the FV–468 certifies that the statements made thereon are correct. It also certifies that he or she is both aware of and willing to comply with the conditions outlined in the regulations regarding all licensed samplers upon approval of the application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.17 hours per response (36.55 total hours divided by 215 total annual responses).

Respondents: Applicants requesting grading and inspection services.

Estimated Number of Respondents: 215.

Estimated Number of Responses: 215.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 36.55.

Forms FV–16, FV–356, FV–358, and FV–468 will be made available in hard copy form. Applicants also may submit information by telephone, facsimile, or by e-mail. Forms FV–16, FV–356, FV–358, and FV–468 are accessible at *http://eforms.ams.usda.gov/#CustomersFV.*

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: December 1, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–30535 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0109]

Notice of Revision and Request for Extension of Approval of an Information Collection; Importation of Equines Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with regulations for the importation of equines and to request extension of approval of the information collection to safeguard the health of the U.S. equine population.

DATES: We will consider all comments that we receive on or before February 7, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0109* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0109, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0109.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of equines into the United States, contact Dr. Barry Meade, Staff Veterinarian, Technical Trade Services Team—Animals, NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale MD 20737; (301) 734–0819. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Equines into the United States.

OMB Number: 0579–0324.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of certain animals and animal products to prevent the introduction into or dissemination within the United States of pests and diseases of livestock.

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. In accordance with Subpart C of the regulations, the importation of equines into the United States involves a variety of information collection activities, including import permit application; foreign health certificates; submission of requests for space at USDA quarantine facilities with declaration of importation and payment terms; specimen submission forms; requests for inspection, other services, dipping treatments; cooperative, trust fund, and written agreements; certification statements; daily records and logs; photographs for identification;

permanent electronic identification compatible reader; plans for medical treatment; application for approval of a quarantine or holding facility; opportunity for a hearing on facility withdrawal or suspension; requests to change a horse's itinerary or method of transportation; and recordkeeping. We are adding as a new collection activity a checklist for approval of permanent, privately owned equine quarantine facilities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

This revised information collection combines equine importation activities currently approved by OMB under "Temporary Importation of Horses; Noncompetitive Entertainment Horses From Countries Affected With Contagious Equine Metritis"(0579–0324), "Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm (0579–0165), and "Importation of Animals and Poultry, Animal and Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals" (0579–0040). We are changing the title to "Importation of Equines into the United States" to accurately reflect the combined collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.645347 hours per response.

Respondents: Importers of horses into the United States; operators of private quarantine facilities; States approved to conduct contagious equine metritis testing; State animal health authorities; foreign government officials; transporters; hobby farm operators; non-profit organizations; accredited veterinarians; private laboratories; and research institutions.

Estimated annual number of respondents: 35,500.

Estimated annual number of responses per respondent: 1.64231.

Estimated annual number of responses: 58,302.

Estimated total annual burden on respondents: 37,625 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–30643 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Dairy Industry Advisory Committee; Public Meeting

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meeting; correction.

SUMMARY: The Farm Service Agency published a document in the **Federal Register** on November 26, 2010, announcing two public meetings of the Dairy Industry Advisory Committee. The location of the December and January meetings have changed. This notice provides the current meeting location information.

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 the **Federal Register** of November 26, 2010, on page 72786, in the table, the location for the meeting on December 16, 2010, and the meeting on January 11 and 12, 2011, should be USDA headquarters, in the Jamie L Whitten Building, Room 104–A, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

The meeting locations for December 14 and 15, 2010, remains the same as published on November 26, 2010, (75 FR 72785–72786). The meeting times and all other information remains the same as initially published.

For clarity, the Dairy Committee will hold the meetings on the following dates and locations:

Date	Time	Location
December 14, 2010	1 p.m.–5 p.m.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.
December 15, 2010	8 a.m.–noon.	USDA headquarters, in the South Building, Room 3074, 1400 Independence Avenue, SW., Washington, DC 20250.
December 16, 2010	8 a.m.–5 p.m.	USDA headquarters, in the Jamie L. Whitten Building, Room 104–A, 12th Street and Jefferson Drive, SW., Washington, DC 20250.
January 11 and 12, 2011.	8 a.m.–5 p.m.	USDA headquarters, in the Jamie L. Whitten Building, Room 104–A, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

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 December 1, 2010.

R. T. Valentine,

Acting Administrator, Farm Service Agency.

[FR Doc. 2010–30646 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent: To Request a Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), and the Office of Management and Budget (OMB) regulations at 5 CFR 1320 (60 FR 44978, August 29, 1995), this notice announces the Natural Resources Conservation Service's (NRCS) intention to revise a currently approved information collection, Long-Term Contracting, to clarify for the public information that is no longer included in the collection.

DATES: To ensure consideration, comments must be received on or before January 6, 2011.

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

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *E-mail: Jill.Atencio@wdc.usda.gov.*
- *Mail:* Paperwork Reduction Act Comments, Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.
- *Hand Delivery:* Department of Agriculture, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250, between 9 a.m. and 4 p.m. Eastern time, Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–1854 in order to be escorted into the building.

FOR FURTHER INFORMATION CONTACT: Phyllis Watkins, Forms Manager, Administrative Services Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 4235 South Building, Washington, DC 20250; *Telephone:* (202) 720–3770; *Fax:* (202) 720–4659. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 0578–0013.

Expiration Date of Approval: May 31, 2012.

Type of Request: To revise a currently approved information collection to update and clarify information that is no longer included in the information collection.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources on privately owned land. The purpose of the Long-Term Contracting information collection is to allow for programs to provide Federal technical and financial cost-sharing assistance through long-term contracts to eligible producers, landowners, and entities. These contracts provide for making land use changes and installing conservation measures and practices to conserve, develop, and use the soil, water, and related natural resources on private lands. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal financial assistance payments are made to the land user, or third party, upon successful application of the conservation treatment. Additionally, NRCS purchases easements for the long-term protection of the property and provides for the protection and management of the property for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds.

Section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Act) (Pub. L. 110–246) exempts Conservation Programs under Title II of the 2008 Act from Chapter 35 of Title 44, U.S.C. (Paperwork Reduction Act). The programs in this information collection that continue to be subject to the requirements to the Paperwork Reduction Act are listed in Table A. This request will clarify the programs in this information collection that are no longer subject to these requirements, and will identify the reduction in burden by removing these forms from the current information collection package. The exempted programs are listed in Table B.

TABLE A—CONSERVATION PROGRAMS SUBJECT TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT

Program	Description
Emergency Conservation Program (ECP) (7 CFR part 701).	USDA Farm Service Agency's ECP provides emergency funding and technical assistance for farmers and ranchers to rehabilitate farmland damaged by natural disasters and for carrying out emergency water conservation measures in periods of severe drought. Funding for ECP is appropriated by Congress.
Emergency Watershed Program (EWP) (7 CFR part 624).	The EWP was initiated in 1950 and is administered by NRCS. It provides technical and financial assistance to local institutions for the removal of storm and flood debris from stream channels and for the restoration of stream channels and levees to reduce the threat to life and property. The program also provides for establishing permanent easements in floodplains with private landowners.
Resource Conservation and Development Program (RC&D).	The RC&D was initiated in 1962 and is administered by NRCS. Through this program, NRCS assists multi-county areas in enhancing conservation, water quality, wildlife habitat, recreation, and rural development. The program provides technical and limited financial assistance for the planning and installation of approved projects.
Watershed Protection and Flood Prevention Program (WPFPP) (7 CFR part 622).	The WPFPP, otherwise known as Pub. L. 566, was initiated in 1954 and is administered by NRCS. It assists State and local units of government in flood prevention, watershed protection, and water management. Part of this effort involves the establishment of conservation practices on private lands to reduce erosion, sedimentation, and runoff.

TABLE A—CONSERVATION PROGRAMS SUBJECT TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT—Continued

Program	Description
Healthy Forests Reserve Program (HFRP) (7 CFR part 625).	HFRP is a voluntary program established for the purpose of restoring and enhancing forest ecosystems to: 1) Promote the recovery of threatened and endangered species; 2) improve biodiversity; and 3) enhance carbon sequestration. The HFRP was signed into law as part of the Healthy Forests Restoration Act of 2003 and amended by the 2008 Act authorized to be carried out from 2009 through 2012.
Wetland Conservation (WC or Swampbuster) (7 CFR part 12).	The Wetland Conservation provisions are part of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996. The WC or Swampbuster provisions condition receipt of USDA benefits on landowners and operators not converting wetlands for agricultural production purposes or to make possible the production of an agricultural commodity. All the programs in this collection except WHIP are subject to compliance with these provisions. Additionally, many of the programs in this collection condition eligibility for certain practices on the type of wetlands present on the farm or ranch, thereby needing a certified wetland determination completed per the regulation in 7 CFR part 12, subparts A and C.

TABLE B—CONSERVATION PROGRAMS EXEMPTED FROM THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT

Wetlands Reserve Program (WRP)	WRP is a voluntary program established to assist owners of eligible lands in restoring and protecting wetlands. It is the goal of WRP to maximize wetland functions and values and optimize wildlife habitat benefits on every acre enrolled in the program particularly for migratory birds and other wetland dependent wildlife.
Farm and Ranch Lands Protection Program (FRPP).	The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, tribal, or local governments and non-governmental organizations with existing FRPPs to purchase conservation easements.
Conservation Security Program (CSP)	CSP is a voluntary program that provides financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on tribal and private working lands. The program is available in all 50 States, the Caribbean Area, and the Pacific Basin area. The program provides equitable access to benefits to all producers, regardless of size of operation, crops produced, or geographic location.
Conservation Stewardship Program	The Conservation Stewardship Program is a voluntary program that provides financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, plants, and animals. It is mentioned here to clearly indicate this program as exempt from the Paperwork Reduction Act and has never been under its confines.
Grassland Reserve Program (GRP)	GRP is a voluntary program established for the purpose of protecting grazing uses and related conservation values by conserving and restoring grassland resources. GRP helps landowners and operators restore and protect grassland, including rangeland and pastureland, and certain other lands, while maintaining the areas as grazing lands. The program emphasizes support for grazing operations, plant and animal biodiversity, and grasslands and shrub lands under the greatest threat of conversion.
Wildlife Habitat Incentive Program (WHIP)	WHIP is a voluntary program that provides technical and financial assistance to enable eligible participants to protect, restore, develop, or enhance habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife in an environmentally beneficial and cost effective manner. The purpose of the program is to develop high quality wildlife habitats that support wildlife populations of local, State, and national significance.
Agricultural Management Assistance (AMA)	AMA provides cost share assistance to agricultural producers to voluntarily address issues such as water management, water quality, and erosion control by incorporating conservation into their farming operations. AMA is available only in 15 States where participation in the Federal Crop Insurance Program is historically low. Producers may construct or improve water management structures or irrigation structures; plant trees for windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.
Environmental Quality Incentives Program (EQIP).	EQIP is a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants to install or implement structural and management practices on eligible agricultural land.

The conservation programs exempted from the Paperwork Reduction Act requirements accounted for a majority of the forms submitted and completed annually. The removal of these programs from the current information collection will result in a significant reduction in burden hours. Table C shows only the burden for those programs that are subject to the requirements of the Paperwork Reduction Act. The burden associated with those programs exempted from the Paperwork Reduction Act (as identified in Table B) has been removed.

TABLE C—BURDEN FOR REQUIRED PROGRAMS UNDER THE PAPERWORK REDUCTION ACT

Form	Purpose	Program(s)	* Number submitted annually
AD–1153 NRCS–CPA–1200.	Application	EWP, WPFPP, HFRP	750; Estimated time per participant is .69 per response.
AD–1154 NRCS–CPA–1202.	Contract or Agreement	EWP, HFRP	150; Estimated time per participant .69 per response.
AD–1155 NRCS–CPA–1155.	Schedule of Practices/Costs and signature sheet.	EWP, WPFPP, HFRP	300; Estimated time per participant .75 per response.
AD–1156 NRCS–CPA–1156.	Schedule Modification	EWP, WPFPP, HFRP	25; Estimated time per participant .60 per response.
NRCS–LTP–13 NRCS–CPA–013.	Status/Contract Review	EWP, WPFPP, HFRP	250; Estimated time per participant .69 per response.
NRCS–LTP–20 NRCS–CPA–260.	Warranty, Easement Deed Conservation, Easement Deed.	EWP, HFRP	150; Estimated time per participant .69 per response.
AD–1157	Option to Purchase Easement	EWP, HFRP	165; Estimated time per participant .69 per response.
AD–1157A	Option to Purchase, Amendment.	EWP, HFRP	120; Estimated time per participant .69 per response.
AD–1158	Subordination Agreement and Limited Lien Waiver.	EWP, HFRP	100; Estimated time per participant .69 per response.
AD–1159	Notice of Intent to Continue	Not used by any non-exempt program.	
AD–1160	Compatible Use Application	EWP, HFRP	200; Estimated time per participant .66 per response.
AD–1161	Application for Payment	EWP, HFRP	200; Estimated time per participant .58 per response.
NRCS–LTP–151	Contract Violation Notification	HFRP, EWP	20; Estimated time per participant .69 per response.
NRCS–LTP–152	Transfer Agreement	HFRP, EWP	5; Estimated time per participant 1.0 per response.
NRCS–LTP–153	Agreement Covering Non-Compliance With Provisions of the Contract.	HFRP, EWP	10; Estimated time per participant .69 per response.
NRCS–CPA–38	Request for Certified Wetland Determination or Delineation.	WC	5,000; Estimated time per participant .83 per response.
NRCS–CPA–68	Conservation Plan	CTA, HFRP	2,700; Estimated time per participant .69 per response.

* The number submitted annually provides the number of forms completed by respondents and the approximate number of hours to complete each form. The response time is taken from the forms themselves as identified in the OMB Disclosure Statement where available.

NRCS anticipates the total number of respondents will be 10,145 (previously 37,504 hours) and that the total burden hours will be 7,661 (previously 25,291 hours). The estimated burden per response depends upon the specific form. This burden amount is identified by form in Table C and ranges from .58 hour to 1 hour per respondent.

NRCS employees generally complete the remainder of the forms in the collection and review the documents with the program participant for concurrence and acceptance. The burden was estimated based on a projected average of documents to be filed annually based on the funding level for the authorized conservation programs. The burden hours have been significantly reduced from the previous submission due to the exemption of Conservation Programs under Title II of the 2008 Act from Chapter 35 of Title 44, U.S.C. (Paperwork Reduction Act). The number of respondents was averaged from fiscal year (FY) 2008 through FY 2010. The total annual cost to the respondents is $91,932. This figure is computed based on 7,661 burden hours times a wage of $12.00 per hour.

Comments: Comments are requested on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden hours (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 will be summarized and included in the request for OMB approval of this information collection, and they will also become a matter of public record.

Signed this 2nd day of December, 2010 in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2010–30674 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Implementation of the Wind Erosion Prediction System for Soil Erodibility System Calculations for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of the Wind Erosion Prediction System (WEPS) for soil erodibility system calculations scheduled for implementation for public review and comment.

SUMMARY: Notice is hereby given of the intention of the Natural Resources

Conservation Service (NRCS) to implement the WEPS which will replace the use of the Wind Erosion Equation (WEQ) where applicable.

DATES: *Effective Date:* This is effective December 7, 2010.

Comment Date: Submit comments on or before January 6, 2011. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted using any of the following methods:

- *Mail:* Eric West, National Highly Erodible Lands and Wetlands Conservation Specialist, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6150 South Building, Washington, DC 20250.
- *E-mail: eric.west@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Eric West, National Highly Erodible Lands and Wetlands Conservation Specialist, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6150 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The WEQ, a simple two-factor linear model for calculating the effects of wind erosion, will be replaced by WEPS for selected regulatory permissible applications. The WEPS model will be used where wind erosion is the primary causal factor for comparing the annual level of erosion before conservation system application to the expected annual level of erosion after conservation system application (i.e., substantial reduction for highly erodible land conservation). The WEQ is the current method in the regulations for calculating substantial reduction and potential erodibility due to the effects of wind. The use of WEQ to calculate potential erodibility remains unchanged. The regulation for WEQ is located at 7 CFR 610.14.

The implementation of the WEPS system does not affect the Highly Erodible Map Unit List contained in the NRCS Field Office Technical Guide as of January 1, 1990. This 1990 list will continue to be used for all erodibility index calculations, including sodbuster determinations and review of previous determinations.

The WEPS computer model is a process-based, daily time-step computer model that predicts soil erosion via simulation of the fundamental processes controlling wind erosion. WEPS can calculate soil movement, estimate plant damage, and predict PM–10 emissions when wind speeds exceed the erosion threshold. The WEPS model can also provide the user with spatial information regarding soil flux, deposition, and loss from specific regions of a field over time. The model is intended for conservation planning, assessing wind erosion for the Department of Agriculture (USDA) NRCS' National Resources Inventory, and aiding the development of regional and national policy.

The WEPS modular design is amenable to incorporation of new features. Thus, WEPS utility will also be for estimating long-term soil productivity, determining physical damage to crops, depositional loading of lakes and streams, as well as estimating visibility reductions near airports and highways. Further, WEPS will aid in calculating both onsite and offsite economic costs of erosion and assess impacts of management strategies on public lands when used in conjunction with other models.

A complete summary of the processes utilized by the WEPS computer model can be found in An Overview of the Wind Erosion Prediction System (*http://www.ars.usda.gov/SP2UserFiles/Place/54300520/wepsoverview.pdf*). A thorough discussion and review of the WEPS model processes is available in the draft WEPS technical document (*http://www.ars.usda.gov/SP2UserFiles/Place/54300520/weps_tech.pdf*). Further, both of the previously referenced documents, as well as other WEPS related topics, can be found at the USDA Agricultural Research Service Engineering and Wind Erosion Research Unit (*http://www.ars.usda.gov/Main/docs.htm?docid=18371*) home page.

The implementation timeframe for WEPS in each field office with a wind erosion concern is January 1, 2011. Title 16-Conservation, Chapter 58-Erodible Land and Wetland Conservation and Reserve Program, Subchapter I-Definitions, 9(C) Equations (i.e., 16 USC section 3801(a)(9)(C)) requires NRCS to make available for public review and comment all proposed changes to equations to carry out HEL provisions of the law in a manner consistent with section 553 of title 5.

Signed this 30th day of November, 2010, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2010–30673 Filed 12–6–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Commerce.Gov Web Site User Survey

AGENCY: Office of the Secretary, Office of Public Affairs.

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 February 7, 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 Mike Kruger, Office of Public Affairs, U.S. Department of Commerce at 202–482–4883 or *mkruger@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to better serve users of Commerce.gov and the Department of Commerce bureaus' Web sites, the Offices of Public Affairs will collect information from users about their experience on the Web sites. A random number of users will be presented with a pop-up box asking if they would like to take a survey. If they say no, the box disappears and the user continues on as normal. If they answer yes, then the box offers them four (4) questions.

1. Based on today's visit, how would you rate your site experience overall? (0 to 10 scale)

2. Which of the following best describes the primary purpose of your visit? (Custom choices)—would be the items in our "I Want to" bar on the right hand side of the *Commerce.gov* site:

- Find jobs or career opportunities at Commerce.
- Call or send an email or letter to Commerce.
- Learn more about Commerce Secretary Gary Locke.
- Find a recent press release.
- Learn more about Census 2010.
- Discover grants, contracting & trade opportunities with Commerce.

• Get the official U.S. time from NIST.

• Get my local weather from the National Weather Service.

• Other.

3. Were you able to complete the purpose of your visit today? (Yes, No)

One of the following two (2) questions are posed to respondents based on their answers to Question 3. (4.1, if answer was Yes; and 4.2, if answer was No)

4.1 What do you value most about the Department of Commerce's Web site? (Open ended)

4.2 Please tell us why you were not able to fully complete the purpose of your visit today? (Open ended)

The survey is provided by iPerceptions as part of their 4Q suite. No personally identifiable information will be collected from the voluntary participants.

II. Method of Collection

Information will be collected via an online form.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households, Business or other for-profit organizations, State, Local, or Tribal government, Federal government.

Estimated Number of Respondents: 36,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–30654 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1726]

Reorganization of Foreign-Trade Zone 138 Under Alternative Site Framework, Columbus, OH, Area

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, Columbus Regional Airport Authority, grantee of Foreign-Trade Zone 138, submitted an application to the Board (FTZ Docket 46–2010, filed 7/21/2010, amended 10/6/2010) for authority to reorganize under the ASF with a service area of Champaign, Clark, Coshocton, Crawford, Delaware, Fairfield, Franklin, Hocking, Knox, Licking, Logan, Madison, Marion, Morrow, Muskingum, Perry, Pickaway, Pike, Ross, Union, Vinton and Wyandot Counties, as well as portions of Guernsey, Athens and Highland Counties, Ohio, adjacent to the Columbus Customs and Border Protection port of entry, FTZ 138's existing Sites 1, 2, 4, 5, 6, and 15 would be categorized as magnet sites, and FTZ 138's existing Sites 13, 14, 16, 17, and 18 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 45096–45097, 8/2/2010) 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 138 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, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2, 4, 5, 6, and 15, on November 30, 2015 and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 13, 14, 16, 17, and 18 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by November 30, 2013.

Signed at Washington, DC, this 26th day of November 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–30665 Filed 12–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–9A001]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review to Aerospace Industries Association of America ("AIA") (Application #92–9A001).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Aerospace Industries Association of America on November 29, 2010. The Certificate has been amended eight times. The previous amendment was issued to AIA on October 5, 2009, and a notice of its issuance was published in the **Federal Register** on October 26, 2009 (74 FR 54961). The original Certificate for AIA was issued on September 8, 1992, and a notice of its issuance was published in the **Federal Register** on September 14, 1992 (57 FR 41920).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing

Title III are found at 15 CFR Part 325 (2010).

The Office of Competition and Economic Analysis ("OCEA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AIA's Export Trade Certificate of Review has been amended to

1. Add the following new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

Acutec Precision Manufacturing, Inc., Saegertown, PA; Airdat LLC, Morrisville, NC; Alcoa Defense, Crystal City, VA; Alliant Techsystems, Inc. (ATK), Minneapolis, MN; ANSYS, Inc., Canonsburg, PA; ArmorWorks Enterprises, LLC, Chandler, AZ; Bombardier, Montreal, Canada; Broad Reach Engineering Company, Golden, CO; Celestica Corporation, Toronto, Canada; Deloitte Consulting LLP, New York, NY; Guardsmark, LLC, New York, NY; Integral Systems, Inc., Columbia, MD; Jabil Defense & Aerospace Services LLC, St. Petersburg, FL; KPMG LLP, New York, NY; M7 Aerospace L.P., San Antonio, TX; Microsemi Corporation, Irvine, CA; OSI Systems, Inc., Hawthorne, CA; Pacifica Engineering, Inc., Mukiliteo, WA; Paragon Space Development Corporation, Tucson, AZ; Plexus Corporation, Neenah, WI; PWC Aerospace & Defense Advisory Services, McLean, VA; SAP Public Services, Inc., Washington, DC; SRA International, Inc., Fairfax, VA; Tech Manufacturing, LLC, Wright City, MO; Therm, Incorporated, Ithaca, NY; TIMCO Aviation Services, Inc., Greensboro, NC; Triumph Group Inc., Wayne, PA; UFC Aerospace, Bay Shore, NY; Vermont Composites, Inc., Bennington, VT; Xerox Corporation, Norwalk, CT.

2. Make the following changes in name or address of existing Members:

Accenture is now located in Chicago, IL, with controlling entity Accenture plc, Dublin, Ireland; AAR Manufacturing, Inc., Wood Dale, IL, is a Member in place of its controlling entity, AAR Corp., Wood Dale, IL; Barnes Group Inc., Bristol, CT, has replaced its subsidiary Barnes Aerospace, Windsor, CT, as the Member; Chromalloy Power Services Corporation, San Antonio, TX, has changed its name to Chromalloy (at the same location). The controlling entity remains the Carlyle Group, Washington, DC; Computer Sciences Corporation (CSC) moved from El Segundo, CA, to Falls Church, VA; Ducommon Incorporated moved from Long Beach, CA, to Carson, CA. Elbit Systems of America, LLC, Fort Worth, TX, the controlling entity of EFW Inc., Fort Worth, TX, has replaced EFW, Inc., as Member. The controlling entity of Elbit Systems of America, LLC, is Elbit Systems, Ltd., of Haifa, Israel. Electronic Data Systems Corporation, Plano, TX, has changed its name to HP Enterprise Services—Aerospace, Palo Alto, CA; General Electric Aviation, Cincinnati, OH, has replaced its controlling entity, General Electric Company, Fairfield, CT, as Member; Microsat Systems, Inc., Littleton, CO, has changed its name to Sierra Nevada Corporation, Space Systems, Littleton, CO; RTI International Materials Inc., has moved from Niles, OH, to Pittsburgh, PA; Science Applications International Corporation has moved from San Diego, CA, to McLean, VA; Sparton Corporation, Jackson, MI, has moved to Schaumburg, IL; Vought Aircraft Industries, Inc., Dallas, TX, has changed its name to Triumph Aerostructures—Vought Aircraft Division. The controlling entity is Triumph Group, Inc., Wayne, PA.

Dated: December 1, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–30524 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, 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) 482–4081.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2010, the Department of Commerce ("the Department") published the initiation of the administrative review of the antidumping duty order on non-malleable cast iron pipe fittings from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976, 29983 (May 28, 2010). The period of review is April 1, 2009, through March 31, 2010. The preliminary results of this administrative review are currently due no later than December 31, 2010.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department determines that it is not practicable to complete the administrative review of non-malleable cast iron pipe fittings from the PRC within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves examining a number of complex issues related to factors of production and surrogate values, as well as requesting and analyzing additional information from NEP Tianjin Machinery Company in a supplemental questionnaire. Therefore, we find that additional time is needed to complete the preliminary results of this administrative review. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this administrative review, which is currently due on December 31, 2010, by 30 days to January 30, 2011.[1] The deadline for the final results of the review continues to be 120 after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

[1] As the 30-day extension falls on Sunday, January 30, 2011, the deadline for the preliminary results of review will be the next business day, which is January 31, 2011.

Dated: November 30, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–30666 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Five-year "Sunset" Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 4, 2010, the Department of Commerce ("the Department") published the notice of initiation of the first sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). On the basis of the notices of intent to participate by domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department conducted a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–4047.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2010, the Department published in the **Federal Register** the notice of initiation of its sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, the People's Republic of China, India, Thailand, and Vietnam, in accordance with section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 103 (January 4, 2010) ("*Notice of Initiation*").

The Department received notices of intent to participate from domestic interested parties, the Ad Hoc Shrimp Trade Action Committee ("AHSTAC"), and the American Shrimp Processors Association ("ASPA"), within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received substantive responses to the *Notice of Initiation* from respondent interested parties (collectively "Vietnamese Respondents") and domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On February 12, 2010, Vietnamese Respondents and ASPA filed rebuttal comments to parties' substantive responses.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On March 2, 2010, the Department determined that Vietnamese Respondents accounted for more than 50 percent of exports by volume of the subject merchandise and, therefore, submitted an adequate substantive response to the Department's *Notice of Initiation. See* Memorandum to James C. Doyle: Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated March 2, 2010. The Department also determined that domestic interested parties submitted an adequate response as at least one domestic interested party submitted a complete substantive response. *See* 19 CRF 351.218(e)(1)(i). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

On May 6, 2010, in accordance with section 751(c)(5)(B) of the Act, the Department extended the deadlines for the preliminary and final results of this sunset review by 90 days from the scheduled dates. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Review of Antidumping Duty Order,* 75 FR 24883 (May 6, 2010).

The Department published the preliminary results of this sunset review on August 6, 2010. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Five-year "Sunset" Review of the Antidumping Duty Order,* 75 FR 47546 (August 6, 2010) ("*Preliminary Results*"). In the *Preliminary Results,* the Department found that revocation of the order would likely result in continuation or recurrence of dumping at margins found in the original investigation.

On September 7, 2010, within the deadline specified in 19 CFR 351.309(c)(1)(i), the Department received a case brief on behalf of Vietnamese Respondents. On September 13, 2010, the Department received rebuttal briefs on behalf of AHSTAC and ASPA.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus* monodon), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus* subtilis), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*),

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum for the Final Results of the First Sunset Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam" to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated November 30, 2010 ("Decision Memo"), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 7046 of the main Commerce Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on certain frozen warmwater shrimp from Vietnam is likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/Exporter	Weighted-average margin (percent)
Bac Lieu Fisheries Joint Stock Company	4.57
Bim Seafood Joint Stock Company	4.57
C.P. Vietnam Livestock Corporation	4.57
Ca Mau Seafood Joint Stock Company ("Seaprimexco Vietname")	4.57
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("Cadovimex-Vietnam")	4.57
Cafatex Fishery Joint Stock Corporation ("Cafatex Corporation") aka Camranh Seafoods	4.57
Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX")	5.24
Cam Ranh Seafoods Processing Enterprise PTE ("Cam Ranh Seafoods")	4.57
Coastal Fishery Development Corporation ("COFIDEC")	4.57
Cuulong Seaproducts Company ("Cuulong Seapro")	4.57
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") (and its affiliate Tho Quang Seafood Processing & Export Company)	4.57
Grobest & I–Mei Industry (Vietnam) Co., Ltd	4.57
Investment Commerce Fisheries Corporation ("Incomfish")	4.57
Minh Hai Export Frozen Seafood Processing Joint Stock Company ("Minh Hai Jostoco")	4.57
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai")	4.30
Minh Phu Seafood Corp. (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group")	4.38
Ngoc Sinh Private Enterprise	4.57
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco")	4.57
Nha Trang Seaproduct Company ("Nha Trang Seafoods")	4.57
Phu Cuong Seafood Processing & Import-Export Co., Ltd	4.57
Phuong Nam Co., Ltd	4.57
Sao Ta Foods Joint Stock Company ("FIMEX VN")	4.57
Soc Trang Seafood Joint Stock Company ("STAPIMEX")	4.57
Thuan Phuoc Seafoods and Trading Corporation (and its affiliates Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory)	4.57
UTXI Aquatic Products Processing Corporation	4.57
Viet Foods Co., Ltd	4.57
Viet Hai Seafood Co., Ltd. aka Viet Nam Fish-One Co., Ltd	4.57

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM—Continued

Manufacturer/Exporter	Weighted-average margin (percent)
Vinh Loi Import Export Company ("VIMEX")	4.57
Vietnam-Wide Entity	25.76

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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–30664 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee, Call for Applications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice and Call for Applications to Serve on Advisory Committee.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is seeking applications from persons interested in serving on the Department of Commerce Spectrum Management Advisory Committee (CSMAC) for new two-year terms. The CSMAC provides advice to the Assistant Secretary for Communications and Information and NTIA Administrator on spectrum policy matters.

DATES: Nominations must be postmarked or electronically transmitted on or before January 10, 2011.

ADDRESSES: Persons may submit applications, with the information specified below, to Joe Gattuso, Designated Federal Officer, by e-mail to *spectrumadvisory@ntia.doc.gov;* by U.S. mail or commercial delivery service to Office of Policy Analysis and Development, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230; or by facsimile transmission to (202) 482–6173.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The CSMAC was first chartered in 2005 under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to carry out the functions of the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Department of Commerce last renewed the CSMAC's charter on April 6, 2009. The CSMAC advises the Assistant Secretary of Commerce for Communications and Information on a broad range of issues regarding spectrum policy. In particular, the current charter provides that the CSMAC will provide advice and recommendations on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefit; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. The CSMAC functions solely as an advisory body in compliance with the Federal Advisory Committee Act (FACA). Additional information about the CSMAC and its activities may be found at *http://www.ntia.doc.gov/advisory/spectrum.*

Under the terms of the charter, the Secretary appoints members of the CSMAC based on their expertise in radio spectrum policy and not to represent any organization or interest. The members serve on the CSMAC in the capacity of Special Government Employee. Members may not receive compensation or reimbursement for travel or for per diem expenses.

The Secretary of Commerce appoints members for two-year terms. There are currently 25 members, the maximum permitted by the charter. NTIA seeks applicants for vacancies that will occur when the appointments of 18 members expire on January 13, 2011.

NTIA expects that, starting in 2011, the CSMAC's work will focus on how best to execute the mandate of the President's spectrum initiative, and specifically the "Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband." (Available at *http://www.ntia.doc.gov/reports/2010/TenYearPlan_11152010.pdf; see also* fact sheet at *http://www.ntia.doc.gov/press/2010/SpectrumReports_11152010.html.*)

Thus, NTIA seeks in particular applicants with strong technical and engineering knowledge and experience, familiarity with commercial or private wireless technologies and associated business plans, or expertise with specific applications of wireless technologies, such as Smart Grid or health information technologies. The Secretary will appoint members such that the CSMAC is fairly balanced in terms of the points of view represented by the members. To achieve this diversity of viewpoints, the Secretary appoints members from industry, academia, not-for-profit organizations, public advocacy, and civil society with professional or personal qualifications or experience that will both contribute to the CSMAC's work and achieve balance. The Secretary will consider factors including, but not limited to, educational background, past work or academic accomplishments, and the industry sector in which a member is currently or previously employed. All appointments are made without discrimination on the basis of age, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status. Members may not, however, be federally registered lobbyists.

Persons may submit applications, with the information specified below, to Joe Gattuso, Designated Federal Officer, by e-mail to *spectrumadvisory@ntia.doc.gov;* by U.S. mail or commercial delivery service to Office of Policy Analysis and

Development, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230; or by facsimile transmission to (202) 482–6173.

All parties wishing to be considered should submit their full name, address, telephone number and e-mail address and a summary of their qualifications that identifies with specificity how their education, training, experience, or other factors would support the CSMAC's work and how their participation would provide balance to the CSMAC. They should also include a detailed resume or *curriculum vitae* (CV).

Dated: December 1, 2010.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–30564 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–60–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.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). 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 January 11, 2011 from 9 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. 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 review and consider draft reports of its Incentives Subcommittee and Unlicensed Subcommittee. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on January 11, 2011, from 9 a.m. to 1 p.m., Eastern Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. 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 at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify 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 attend 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 at the above-listed address and they must be received by close of business on January 5, 2011, to provide sufficient time for review. Comments received after January 5, 2011, 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 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: December 1, 2010.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–30557 Filed 12–6–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning the Clinical Decision Model

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in patent application PCT/US2009/060850, entitled "Clinical Decision Model," filed October 15, 2009. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications

(ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a model for providing a patient-specific diagnosis of disease using clinical data. More particularly, the invention relates to a fully unsupervised, machine-learned, cross-validated, and dynamic Bayesian Belief Network model that utilizes clinical parameters for determining a patient-specific probability of malignancy, transplant glomerulopathy, healing rate of an acute traumatic wound, and/or breast cancer risk.

Brenda S. Bowen

Army Federal Register Liaison Officer.

[FR Doc. 2010–30608 Filed 12–6–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 6, 2011.

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: December 2, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Notice Inviting Applications for Participation in the Quality Assurance Program.

OMB Control Number: 1845–0055.

Agency Form Number(s): N/A.

Frequency of Responses: One Time.

Affected Public: Business or other for-profit; Not-for-profit institutions, State, Local or Tribal Government; State Educational Agencies, Local Educational Agencies.

Total Estimated Number of Annual Responses: 125.

Total Estimated Annual Burden Hours: 125.

Abstract: The Secretary invites institutions of higher education to send a letter of application to participate in the Department of Education's Quality Assurance Program. This Program is intended to allow and encourage participating institutions to develop and implement their own comprehensive programs to verify student financial aid application data.

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 4384. 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. 2010–30657 Filed 12–6–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plans previously submitted by Ohio and Louisiana.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Section 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the third revision to Ohio's state plan and the third revision to Louisiana's state plan.

The amendments to Ohio and Louisiana's state plans provide for compliance with the Military and Overseas Voter Empowerment Act (MOVE Act) and address changes in the respective budgets to account for the use of Fiscal Year 2009 and 2010 requirements payments. Ohio's amended state plan also presents an updated framework having implemented the requirements of Title III of HAVA. In accordance with HAVA Section 254(a)(12), all the state plans

submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. Ohio and Louisiana confirm that the amendments to their state plans were developed and submitted to public comment in accordance with HAVA Sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from December 7, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising these state plans and encourages further public comment, in writing, to the state election officials listed below.

Chief State Election Official

Secretary Jennifer Brunner, Secretary of State, 180 East Broad Street, Columbus, Ohio 43266, Phone: (614) 466–2655

Secretary Tom Schedler, Secretary of State, Twelve United Plaza, 8585 Archives Blvd., Baton Rouge, Louisiana 70809, Phone: (225) 342–4479, Fax: (225) 922–2003

Thank you for your interest in improving the voting process in America.

Dated: December 1, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

STATE OF OHIO 2010 AMENDMENTS TO THE STATE HAVA PLAN

Amending Ohio's State Plan
to Implement the Help America Vote Act of 2002,
As Revised January 12, 2005,
And Recorded in the Federal Register, Vol. 70, No. 66, April 7, 2005,
And as Amended April 29, 2009,
And Recorded in the Federal Register, Vol. 74, No. 101, May 28, 2009

Ohio Secretary of State

November 8, 2010

Donetta Davidson, Chair
United States Election Assistance Commission
1201 New York Ave., NW – Suite 300
Washington DC 20005

Dear Ms. Davidson:

I am pleased to submit to you the State of Ohio 2010 Amendments to the State HAVA Plan. Ohio's State Plan was initially adopted in May 2003, revised in January 2005, and amended in May 2009. Although Ohio has not materially changed its plan since that time, it is appropriate that these Amendments be filed in order to reflect the following:

1. The current membership of Ohio's State Plan Committee.
2. Ohio's plans for using HAVA requirements payments authorized by Congress in the FY 2009 and FY 2010 Appropriations Bills and any future appropriations.
3. Use of HAVA funds to implement and comply with the MOVE Act.

The 2010 Amendments have been developed in accordance with section 255 of HAVA, and the requirements for public notice and comments required by section 256 of HAVA.

It is my privilege to thank you, on behalf of all Ohio voters, for the accomplishments of the Elections Assistance Commission (EAC). I look forward to continued cooperation between Ohio and the EAC as we work together to fully implement Congressional intent in appropriating additional HAVA funds to further improve the administration of federal elections in Ohio.

Any public comments about the State of Ohio 2010 Amendments to the State HAVA Plan may be directed via e-mail at *info@sos.state.oh.us* or by mail to the office of the Ohio Secretary of State, Attn: General Counsel, 180 East Broad Street, 15th Floor, Columbus, OH 43215.

Sincerely,

Jennifer Brunner

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MEMBERS OF OHIO HAVA STATE PLAN COMMITTEE AND DEVELOPMENT OF 2010 AMENDMENTS TO THE STATE HAVA PLAN

In compliance with Section 255 and 256 of HAVA, Secretary of State Jennifer Brunner identified and appointed to the HAVA State Plan Committee individuals who agreed to serve as members. On August 5, 2010, Ohio Secretary of State Jennifer Brunner convened a meeting of the reconstituted Ohio State HAVA Plan Committee. The committee's task was to review the Ohio State Plan, as revised in January 2005 and as amended in May 2009, and to approve additional amendments to the plan for expending the FY 2009, FY 2010, and any future Requirements Payments allocated by Congress to Ohio.

The following Ohioans served as members of the Committee:

- Brian E. Shinn, Chair, General Counsel, Ohio Secretary of State
- William A. Anthony, Jr., Director, Franklin County (Ohio) Board of Elections (chief election official of second most populous jurisdiction)
- Brett Harbage, ADA Coordinator, Ohio Secretary of State
- Leslye Huff, Attorney and Civil Rights Activist; Ohio Voting Rights Institute Advisory Council member
- Scott Lissner, University ADA Coordinator, The Ohio State University
- The Honorable Cora Marshall, County Commissioner, Washington County, Ohio
- Jeanette Mullane, President, Ohio Association of Election Officials, Director, Stark County (Ohio) Board of Elections
- Jody O'Brien, Treasurer, Ohio Association of Election Officials, Deputy Director, Hancock County (Ohio) Board of Elections
- Jane Platten, Director, Cuyahoga County (Ohio) Board of Elections (chief election official of most populous jurisdiction)
- Debra Quivey, Director, Athens County (Ohio) Board of Elections
- Eleanor Speelman, Former General Counsel, Ohio Secretary of State
- Pierrette "Petee" Talley, Secretary-Treasurer, Ohio AFL-CIO; Ohio Voting Rights Institute Advisory Council

The Committee was supported by the following members of Secretary Brunner's staff:

- Ann L. Hosutt, Administrative Aide, Ohio Secretary of State
- Taylor Jacklin, Administrative Assistant, Ohio Secretary of State

The first committee meeting was called to order on August 5, 2010. The 2009 Amendments to the existing state plan were reviewed, and the application procedure for FY 2009 and FY 2010 Requirements Payments was discussed. Committee members were provided draft language to be considered for inclusion in the State Plan Amendments. Thereafter, committee members were provided an opportunity to provide additional input and comments.

On August 23, 2010, committee members were provided a draft of the State of Ohio 2010 Amendments to the State HAVA Plan. A vote was taken on the draft. The draft was approved by a vote of 10 – 0, with two committee members absent.

The Secretary thereafter issued notice through a public press release issued September 7, 2010, and posting on the Secretary's Web site, *www.sos.state.oh.us.* The notice advised that the Proposed 2010 Amendments to the State of Ohio HAVA Plan were available for review and submission of public comment either personally at the Secretary's office at 180 East Broad Street, 1st Floor, Columbus Ohio, 43215, by mail to the same address, and on the Secretary's Web site at *www.sos.state.oh.us.* The period for public comment was from September 8, 2010 to October 8, 2010, a period of over 30 days.

On October 13, 2010, the Ohio HAVA State Plan Committee voted to approve the 2010 Amendments to the State of Ohio HAVA Plan. The Plan is now submitted to the Elections Assistance Commission for its review and for publication in the Federal Register.

USE OF FY 2009, FY 2010, AND FUTURE REQUIREMENTS PAYMENTS TO AID IN THE ADMINISTRATION OF FEDERAL ELECTIONS

Ohio is pleased to report that it has met the requirements established in Title III of HAVA, 42 U.S.C Section 15301 et seq., as summarized below.

HAVA Section 301 requires that Ohio use "voting systems" (both hardware and software) that meet certain criteria, including:

- Voter verification before the ballot is cast.
- Notice of overvotes, and opportunity to correct.
- Audit capacity of voting systems.
- Accessibility for individuals with disabilities.
- Voting system must meet error rates within EAC standards.

All 88 Ohio counties have replaced older punch card and other non-HAVA compliant voting machines with voting systems that meet the criteria listed above. Ohio has therefore met the requirement established in Sec. 301 of HAVA Title III.

HAVA Section 302 requires that Ohio provide for provisional voting and posting of voting information at polling places. This requirement has been implemented statewide in Ohio. Ohio therefore has met the requirement established in Sec. 302 of HAVA Title III.

HAVA Section 303 requires that Ohio establish a computerized statewide voter registration database that meets certain criteria, including:

- Ongoing maintenance of the database, e.g., removal of names, while also providing safeguards to ensure that eligible voters are not removed in error.
- Ensuring "technological security" to prevent unauthorized access to the computerized database
- Ensuring that voter registrations include certain identifying information (driver's license number, last 4 SSN digits or other identifying number).
- Matching of voter database to motor vehicle database.
- Providing for voter registration by mail with certain documentation.

Ohio has established a computerized statewide voter registration database as described above. Ohio therefore has met the minimum requirements established in Sec. 303 of HAVA Title III.

On April 24, 2007, Ohio's chief election officer, Secretary of State Jennifer Brunner, filed the certification established in Section 251(b)(2) (B) of HAVA.

Ohio therefore is eligible to use the FY2009, FY 2010, and future Requirements Payments to carry out the purposes enumerated in Section 101 of HAVA and is not legally constrained to use those funds only for purposes required by Title III of HAVA. Thus, Ohio may use the FY 2009, FY 2010, and future Requirements payments for the following Section 101 purposes:

A. Further improving the systems implemented as a requirement of Title III of HAVA (including the statewide voter registration database);
B. General activities that will improve the administration of elections for federal office;
C. Educating voters concerning voting procedures, voting rights, and voting technology;
D. Training election officials, poll workers, and election volunteers;
E. Developing and amending the State Plan;
F. Improving, acquiring, leasing, modifying, or replacing voting systems, and technology and methods for casting and counting votes;
G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities; and
H. Further improving the toll-free telephone hotline that voters may use to obtain general information concerning elections and to report possible voting fraud and voting rights violations.

The Military and Overseas Voter Empowerment ("MOVE") Act amended HAVA to permit the use of Requirements Payments to implement the MOVE Act and to require state plans to describe how the state will comply with the MOVE Act. Ohio intends to use existing Requirements Payments to implement and comply with the MOVE Act as further described herein.

Ohio intends to use the FY 2009, FY 2010, and any future Requirements Payments consistent with these Section 101 purposes as further described in this Plan Document.

Ohio anticipates a need for flexibility in determining specific uses and in the event of future Requirements Payments appropriations. It does, however, intend to use HAVA funds as described in the remainder of this Plan Document, as well as for new initiatives as needs arise that will, in combination with state funds, serve to improve the administration of federal elections in Ohio.

Further Improvement of Implemented Title III Requirements

The Secretary has established several HAVA-funded positions within her office to assure that the requirements of Title III, having now been implemented, continue to be fully maintained and improved, as follows:

ADA Compliance

The elimination of barriers to voting for persons with disabilities continues to be a priority in Ohio. HAVA requirements payments will fund two positions in the Secretary of State's office to administer ADA compliance throughout the Ohio elections system. The ADA Coordinator and ADA Specialist work to ensure access to voting for persons with disabilities, to educate persons with disabilities about voting, provide training for election officials and poll workers on how best to include individuals with disabilities in the election process, and to assess current and potential polling locations to support board implementation and compliance with state and federal accessibility laws. The individuals in these positions also administer the HAVA Section 261/Health and Human Services subgrant program for local election officials in Ohio.

Those positions are:

ADA Coordinator –Responsible for ensuring that people with disabilities have access to the voting process. This includes educating voters with disabilities about their rights, educating election officials and poll workers on how best to include people with disabilities, assessing whether polling locations are accessible, and administering the HAVA Section 261/Health and Human Services grant program.

ADA Specialist –Responsible for ensuring that people with disabilities have access to the voting process. This includes assisting the coordinator in outreach, voter education, poll worker training, and administering HAVA Section 261/Health and Human Services grant funds.

Ohio plans to use HAVA funds to continue funding these or similar positions on an ongoing basis. The Secretary of State will continue to train and educate election officials and poll workers to ensure full participation of individuals with disabilities in the election process.

In addition, to the extent that Ohio elects to use any FY 2009, FY 2010, or future Requirements Payments for the purchase of new voting systems, or components thereof, the voting system will meet the voting system standards for disability access as set forth in HAVA Section 301(a)(3).

Information Technology

Ohio utilizes information technology extensively in its ongoing efforts to comply with HAVA. HAVA requirements payments will supplement state funding of ongoing hardware and software maintenance licenses, a T-1 line connecting each of Ohio's 88 boards of elections with the Ohio Secretary of State's office, and other information technology hardware and software improvements. Additionally, HAVA requirements payments will fund an Information Technology Developer position in the Secretary of State's office to develop, maintain, and modify HAVA related applications software and data processing projects. This position is:

Information Technology Developer –Responsible for developing, maintaining, and modifying HAVA related application software and data processing projects.

Statewide Voter Registration Database

Ohio continues to maintain and improve its statewide voter registration database, including increasing the compatibility of county boards of elections databases with the statewide database. In 2010, the Ohio Secretary of State entered into a Memorandum of Understanding and Addendum with the Ohio Department of Public Safety, Bureau of Motor Vehicles, to enhance the process for verifying voter registration information in the Ohio statewide voter registration database (SWVRD).

HAVA requirements payments will continue to fund a Statewide Voter Registration Database Coordinator or a similar position within the Secretary of State's office. The individual in this position researches and monitors all applicable HAVA requirements for the statewide voter registration database and works with information technology staff in the Secretary of State's office to maintain and improve the database. This position is:

Statewide Voter Database Coordinator – Responsible for researching and monitoring all applicable HAVA requirements, policies, and laws in an effort to oversee the voter registration database, to advise the county boards of elections of their responsibilities in ensuring accuracy of the database and to make other recommendations where appropriate.

MOVE Act Implementation and Compliance

Funding required to assist Ohio county boards of elections in implementing and complying with MOVE Act requirements will be supported through current HAVA funds (through the FY 2008 Requirements Payments already received by the state). Those funds will be used to provide software and scanner functions for all Ohio county boards of elections that do not currently have that capability. Funds may also be used as needed to upgrade the current host computer at the Ohio county boards of elections to ensure compatibility with the scanners. In addition, HAVA funds are already allocated for the ongoing funding of the Ohio county board of elections' T-1 lines that will also be utilized for implementation of the MOVE Act.

General Activities That Will Improve the Administration of Elections for Federal Office

Availability of Supplemental and Back-up Voting Options for Ohio Voters

The implementation of electronic voting systems in Ohio has generated substantial media coverage and public interest. Experience has shown that, in emergency situations where equipment problems have materialized on Election Day and in elections with very high voter turnout, back-up voting options are critical to ensure that no Ohio voter is turned away at a polling location or must wait in line for an unreasonable amount of time to exercise the right to vote. Counties employing direct electronic recording system (DREs) as their primary voting system benefit from the availability of back-up paper ballots at all polling places. Consequently, under the terms of the settlement of the *League of Women Voters v. Brunner* case, all Ohio county boards of elections using DRE voting systems as their primary voting system must provide back-up paper ballots for use at every state general election in even-numbered years (through the 2014 general election) and for use at the 2012 presidential primary election.

HAVA requirements payments were used during 2008 and will continue to be used to offset the cost to counties of providing back-up paper ballots for federal elections. Additionally, HAVA funds will be used to assist the county boards of elections to defray the costs of compliance with the Voting Rights Act regarding providing multi-lingual voting materials.

DISTRIBUTION AND MONITORING OF REQUIREMENTS PAYMENT TO OHIO COUNTY BOARDS OF ELECTIONS

Ohio is pleased to describe its plans in regard to the possible distribution and monitoring of requirements payment to units of local government or other entities in the State for carrying out the activities described in its HAVA State Plan.

Criteria for determining eligibility of possible recipients. Ohio's State Plan authorizes the distribution of HAVA funds to one or more of Ohio's 88 county boards of elections, but to no other units of local government or any other state entity. Ohio's county boards of elections are responsible for conducting Ohio elections, including elections for federal office, and are therefore eligible recipients of HAVA funds. Ohio's boards of elections further play a crucial role in the maintenance of the computerized statewide voter registration database established during the administration of Secretary of State Brunner's predecessor and recently enhanced through a Memorandum of Understanding and Addendum between the Ohio Department of Public Safety, Bureau of Motor Vehicles, and the Ohio Secretary of State.

Monitoring of performance of grant recipients. Ohio distributes to county boards of elections HAVA Section 261 funds, which are administered through the U.S. Department of Health and Human Services rather than the Elections Assistance Commission. These subgrants are used by county boards of elections to accomplish accessibility for individuals with disabilities at the precinct level and provide pollworker training concerning ADA accessibility.

The Secretary of State's office has established a system by which counties seeking HAVA Section 261 subgrants must first submit an application describing the proposed use of the HAVA/HHS funds. Prior to approval of a subgrant, Secretary of State staff review the application to assure that the proposed use is compliant with HAVA. Should Ohio distribute FY2009, FY 2010, and any future Requirements Payments directly to county boards of elections, similar application procedures and review will be implemented and administered by the office of the Secretary of State to ensure that grant recipients use HAVA funds consistent with performance goals adopted in the State Plan.

In addition, the Secretary of State has established systems to assure that HAVA/HHS funds have been used in the manner stated on applications submitted by counties by requiring counties to choose between two methods of receiving those funds. Counties may chose a reimbursement method of payment, in which receipts demonstrate that expenses have been incurred consistent with the application. Alternatively, counties may choose a cash advance method in which the county must be prepared to spend the funds within 30 days of receipt. Use of the cash advance method requires the county to have fully planned an approved expenditure to minimize the amount of time HAVA/HHS funds remain at the county level prior to

expenditure. At the end of the 30-day advance, Secretary of State finance staff follow up with each county board of elections in order to obtain documentation e.g., receipts, that demonstrate that HAVA funds were used for HAVA purposes.

Moreover, the Secretary of State has employed 16 regional liaisons, three of whom concentrate on information technology at the county level. These employees, whose positions are funded currently through state funds rather than HAVA funds, are responsible for advising, assisting and monitoring county boards of elections in the performance of their duties. Secretary of State regional liaisons travel throughout their assigned counties regularly and will confirm that HAVA funds distributed to county boards of elections are used consistently with performance goals adopted in the State Plan.

USE OF REQUIREMENTS PAYMENTS TO PROVIDE EDUCATION TO VOTERS AND ELECTION OFFICIALS AND TO PROVIDE POLLWORKER TRAINING

Ohio is pleased to describe its plans in regard to voter education and election official and poll worker training.

Voter Education

Voter education continues to be a critical component of ensuring that all citizens who are eligible to vote are able to participate in the electoral process and that their votes are counted accurately. Additionally, election officials are experiencing growing demands from increased voter turnout at the polls, expanded absentee voting, complex election laws and procedures, and public and media scrutiny. These demands require elections officials to remain current in their knowledge and in their ability to perform their duties competently. Moreover, adequate training of poll workers in all counties in Ohio is essential to provide uniform standards for the efficient administration of elections at polling locations where most Ohio citizens will be exercising their right to vote. Ohio will continue to use HAVA requirements payments to supplement state funding for voter education initiatives and for training election officials and poll workers.

Secretary of State Jennifer Brunner created the Voting Rights Institute (VRI) as one means of implementing voter education programs in Ohio. VRI serves as a clearing house for voter questions and concerns, and works with community organizations to provide voter education. HAVA requirements payments fund all or part of six positions in VRI, including administrative staff, outreach/education staff and an NVRA Coordinator. HAVA requirements payments will also fund VRI programs and constituent inquiry tracking programs. Additionally, the Secretary of State will continue to provide public voter education materials through publications created by

the Communications Division, Elections Division, and VRI and through the office's Web site, maintained by the Communications Division, to Ohio's boards of elections.

VRI positions partially or fully funded by HAVA funds include the following:

- **Director, Voting Rights Institute** –Responsible for overseeing all aspects of VRI program delivery, staff direction and advising, and work to ensure Ohio's elections are free, fair, open and honest.
- **Program and Outreach Supervisor, Voting Rights Institute** –Responsible for all VRI program development and outreach efforts as they pertain to voter education, program delivery and working to ensure free, fair, open and honest elections.
- **Strategic Planning & Projects Coordinator, Voting Rights Institute** –Responsible for coordination and oversight for all VRI projects including Citizen Response Center activities, grants administration and research, and development & coordination of all VRI reporting tools.
- **NVRA Coordinator, Voting Rights Institute** – Responsible for coordination of Secretary of State efforts to support NVRA agency activities, development of NVRA-related training for agencies, all communications and reporting,
- **Executive Assistant, Voting Rights Institute** –Responsible for assisting fellow staff members in all functions of VRI program delivery, administrative oversight and director functions, as assigned. Manages files, data for division, and constituent services.
- **Education and Outreach Specialist** - Northern Region, Voting Rights Institute Responsible for implementation of division and agency voter education programs with focus on the northern region of the state. Assist Program and Outreach Supervisor in voter education projects and activities.

Election Official Training

Ongoing training of Ohio election officials, including the board members and staff at Ohio's 88 boards of elections, will continue to be funded in part by HAVA requirements payments. Dissemination of information to elections officials using current technology is an effective and efficient means of educating election officials. Therefore, the Secretary of State will utilize HAVA requirements payments to continue to provide each of the 88 Ohio county boards of elections with a T-1 line that allows rapid and secure communications between the Secretary of State's office and the boards of elections, including transmission of voter registration data for purposes of the HAVA-mandated statewide voter registration database, e-mails, directives, advisories and memoranda regarding the interpretation of election laws and other election administration matters.

Poll Worker Training

HAVA requirements payments have also been used to significantly enhance the Secretary of State's poll worker training initiatives and to augment the boards of elections' poll worker training programs through the employment of a staff member and the funding of training materials. The position of Elections Training and Curriculum Development Specialist was created within the Elections Division to develop and administer poll worker training programs, including an online poll worker training program that is available on the internet to all county boards of elections and to the public. The Elections Training and Curriculum Development Specialist has also developed a poll worker training manual for boards of elections and quick reference Election Day materials for poll workers. These resources allow for the establishment of uniform standards for poll worker training for all county boards of elections in Ohio and permit counties with limited resources the opportunity to provide their poll workers with professionally developed training that is specific to Ohio and its elections systems and administrative procedures. This position is fully funded using HAVA funds.

- **Elections Training and Curriculum Development Specialist** –Responsible for researching and developing elections-related curriculum and training materials for several different audiences (boards of elections, poll workers and volunteers), in a variety of formats (manuals, flip charts, posters, online, videos, etc.).

PROPOSED BUDGET FOR HAVA APPROPRIATIONS

Ohio is pleased to present the Ohio HAVA Grant Fund Budget annual plan. Because the requirements of Title III have been met in Ohio, all expenditures described in the budget will be used to carry out purposes described in Titles I and II of HAVA.

On July 1, 2010, the first day of Ohio's FY 2011, Ohio had a remaining balance of approximately $4.0 million of funds attributable to prior HAVA payments. Combined with the anticipated $3.9 million FY 2009 and $2.7 million FY 2010 Requirements Payments allocated to Ohio, Ohio anticipates a balance of approximately $10.6 million of HAVA funds (plus interest) to use in carrying out HAVA activities going forward.

Annual Estimated Ohio HAVA Plan Budget:

HAVA Activity/Purpose	Estimated Annual Amount
Positions – ADA Coordinator, ADA Specialist, IT Developer, Statewide Voter Database Coordinator, VRI/Voter Education Staff, Elections Training & Curriculum Development Specialist	$770,000
IT Hardware/Software Maintenance Licenses	$300,000
IT Hardware Replacement (approximately every 5 years)	$500,000
Misc – Travel, Audit, Provisional Ballot/Toll-Free Hotline, etc.	$60,000
County Board of Elections T-1 Lines	$450,000
Supplemental & Back-up Paper Ballots	$300,000
Educational Publications and Printing	$125,000
On-line Poll Worker Training Updates	$30,000
Poll Worker Training Manuals/Flip Charts	$50,000
Reimbursement to Counties for Poll Worker Training	$300,000
Maintaining MOVE Act Requirements	$25,000
Other Identified HAVA Compliant Uses	---
Total	**$2,910,000**

OHIO'S SATISFACTION OF MAINTENANCE OF EFFORT REQUIREMENT

Ohio will meet its MOE requirement to maintain its funding effort at the same level that it expended money for HAVA funded activities in the fiscal year preceding November 2000 through non-HAVA historical elections administration funding mechanisms (e.g., amounts distributed to the Secretary of State from the Ohio General Revenue Fund and revenues generated through the Business Services Division of the office of the Secretary of State). The primary source of operating funds for the Ohio Secretary of State is from revenues generated through the Business Services Division of the office. In addition, just under $2.5 million annually is provided from the state's General Revenue Fund for office operations. These sources continue to provide ongoing support for the Elections Division, Elections Field Staff and the Campaign Finance section of the office. These traditional and ongoing funding sources clearly demonstrate that Ohio will meet its MOE requirements.

Ohio Maintenance of Effort

State Fiscal Year	Total Expenses
2000-base year	$1,336,489
2001	$1,424,521
2002	$1,447,974
2003	$2,030,605
2004	$2,693,115
2005	$2,357,656
2006	$2,076,446
2007	$2,590,099
2008	$2,822,230
2009	$3,048,168
2010	$2,952,428

OHIO'S SATISFACTION OF STATE MATCH REQUIREMENT

The Election Assistance Commission has advised that state funds used exclusively for HAVA related purposes may be designated so as to satisfy the matching requirement of 42 USC §15403(b)(5) [HAVA 253 section]. A state may utilize previously allocated funds to satisfy the Requirements Payment matching obligation, so long as these funds were within the state's control and the funds were distinctly appropriated for HAVA specified activities.

Ohio's 5% state match requirements for the Requirements Payments are as follows:

FY 2009	$203,711
FY 2010	$134,242
Total	$337,953

Ohio supports elections with business services revenue and state-generated GRF funds in amounts far exceeding the 5% match requirement listed above, therefore satisfying the state match requirement. However, these amounts cannot be deposited into our HAVA fund due to state restrictions on comingling funds.

PERFORMANCE GOALS AND MEASURES

The vast majority (approximately 85%) of HAVA funds received by Ohio to date have been spent on providing new voting equipment to Ohio's 88 counties. Implementation of new voting equipment was completed throughout Ohio prior to 2007.

Going forward, the Secretary of State has tasked her staff and the boards of elections together to perform the mission of assuring free, fair, honest and open elections. Because Ohio has met requirements established by Title III HAVA, as described on page 5 of this Plan, the 2010 Amendments reflect Ohio's intent to use HAVA funds to continue to refine and improve the administration of elections using HAVA-compliant voting systems as described more fully throughout this document.

INTERPLAY OF HAVA TITLE I FUNDS WITH FY 2009, FY 2010, AND FUTURE REQUIREMENTS PAYMENTS

Ohio has no HAVA Title I, Section 101 funds remaining. Because Title I funds are no longer available, no new activities will be funded through Title I expenditures.

ONGOING HAVA STATE PLAN MANAGEMENT

The plan will be managed by the chief elections officer of the State of Ohio, Ohio Secretary of State Jennifer Brunner, with the assistance of her appointees and staff, including the following:

- **Assistant Secretary of State** – Michael Rankin
- **Deputy Assistant Secretary of State and Director of Elections** – David Farrell
- **Deputy Assistant Secretary of State and Director of Legislative Services**– Mike Stinziano
- **Chief of Staff** – Gretchen Green
- **Chief Financial Officer** – Veronica Sherman
- **Acting Chief Information Officer** – Terry Dick
- **General Counsel** – Brian E. Shinn

The Secretary of State and her staff will follow the laws and policies of the State of Ohio, as well as best management practices in conformance with generally accepted principles and the direction of the Secretary of State.

In Ohio, significant aspects of election administration occur at the county level through the work of county boards of elections and their staffs. Because of the interconnectedness between the office of the Secretary of State and the county boards of elections, HAVA State Plan Management also requires strong management skills at the board level. Two educational conferences occur in Ohio each year at which board members and staff meet with representative Secretary of State employees and other presenters. These conferences provide local elections officers opportunities for dialogue, training and education, both with each other and with the Secretary.

Ohio Revised Code 3501.05 charges the Secretary of State with identified duties, including the following:

- Appoint all members of boards of elections.
- Issue instructions by directives and advisories to members of the boards as to the proper methods of conducting elections.
- Prepare rules and instructions for the conduct of elections.
- Compel the observance by election officers in the several counties of the requirements of the elections laws.
- Investigate the administration of election laws, frauds, and irregularities in elections in any county; and referral of election law violations for prosecution.
- Adopt administrative rules for the removal by boards of elections of ineligible voters from the statewide voter registration database.

These and other tools provided the Secretary of State by the Ohio Revised Code foster appropriate management of HAVA in Ohio.

In addition, the Ohio Revised Code requires the Secretary of State to issue reports outlining data collected concerning elections. This data, collected over future elections, will provide objective documentation of Ohio's progress in implementing the goals.

COMPARISON OF OHIO STATE PLAN INCLUDING 2009 & 2010 AMENDMENTS TO OHIO STATE PLAN AS REVISED JANUARY, 2005

The most significant difference between the previous Ohio State Plan (as amended January 12, 2005) and the revised, amended Ohio State Plan is the fact that the original requirements of Title III have been implemented, as outlined below:

- Ohio has spent approximately $115 million to replace non-HAVA-compliant punch card and other voting systems in Ohio. Currently 53 Ohio counties employ direct electronic recording voting systems (DRE) as their primary voting system, and 35 counties use optical scan systems to tabulate votes cast on paper ballots as their primary voting system. In addition, every voting location in Ohio is equipped on Election Day with an electronic voting system that accommodates the needs of people with disabilities. Ohio intends to continue funding full-time positions within the office of the Ohio Secretary of State as described above to continue, in cooperation with other non-HAVA-funded Secretary of State Elections Division staff, to maintain and improve Ohio's computerized statewide voter registration database.

- Section 302 requirements concerning Provisional Voting and Voting Information have been implemented through legislation enacted by the Ohio General Assembly and directives issued by the Secretary of State, which carry the weight of law.
- Section 303 requirements concerning implementation and maintenance of a statewide voter registration list have been implemented. Although fully operational, additional HAVA funding is needed to implement improvements to the system. In addition, HAVA funding is needed to continue T-1 lines allowing electronic transmission of voter registration data from the 88 county boards of elections to the office of the Secretary, at a cost of approximately $450,000 annually. Hardware and software licenses and other expenses total approximately $300,000 annually.

Accordingly, the 2010 Amendments reflect Ohio's intent to use HAVA funds to continue to refine and improve the administration of elections using HAVA-compliant voting systems.

In addition, the 2010 Amendments to the Ohio HAVA State Plan reflect Ohio's intent to use HAVA funds for the procurement of back-up paper ballots by Ohio counties that use DRE voting systems. In Ohio, back-up paper ballots are required to be available for use by Ohio voters in the event of DRE system malfunctions, power outages or other emergencies and to alleviate long lines, should they occur, at polling places for the state general election in even-numbered years (through 2014) and for the 2012 presidential primary election.

OHIO'S COMPLIANCE WITH 30-DAY PUBLIC NOTICE AND COMMENT REQUIREMENTS (HAVA SECTION 256)

The State has followed the 30-day public notice and comment requirements of Section 256 prior to final adoption of the 2010 Amendments to the Ohio State HAVA Plan.

OHIO'S ADMINISTRATIVE COMPLAINT PROCEDURE (HAVA Section 402)

The State has filed with the EAC a plan for the implementation of the uniform, non-discriminatory administrative complaint procedures required under Section 402 (or has included such a plan in the State plan), and has such procedures in place.

The complaint mechanism required under Section 402 is established in the existing Ohio State Plan and is available to the public through the official Web site of the Ohio Secretary of State: http://www.sos.state.oh.us/SOS/Upload/elections/hava/AdminComplaintProcedure.pdf.

OHIO'S COMPLIANCE WITH FEDERAL LAWS

The State is in compliance with each of the following federal laws as they apply to the Act:

- The Voting Rights Act of 1965;
- The Voting Accessibility for the Elderly and Handicapped Act;
- The Uniformed and Overseas Citizens Absentee Voting Act;
- The National Voter Registration Act of 1993;
- The Americans with Disabilities Act of 1990;
- The Rehabilitation Act of 1973; and
- The Military and Overseas Voter Empowerment (MOVE) Act.

OHIO'S COMPLIANCE WITH TITLE II AND TITLE III PROVISIONS

Ohio's Amended State Plan reflects proposed HAVA expenditures consistent with the conclusion that, to the extent that any portion of the Title II requirements payment is used for activities other than meeting the requirements of Title III, the State's proposed uses of the requirements payment are not inconsistent with the requirements of Title III; and the use of the funds under this paragraph is consistent with the requirements of section 251(b). Ohio has already filed the certification established in Section 251(b)(2)(B) of HAVA (see Ohio's statement in response to Section 1(a) of this application). Ohio is therefore no longer limited to using FY 2009, FY 2010, and any future requirements payments for only Title III purposes. Nor are any of Ohio's proposed uses contained in this Amended Stated Plan inconsistent with the requirements of Title III.

STATE OF LOUISIANA

DEPARTMENT OF STATE

HELP AMERICA VOTE ACT OF 2002
As required by Public Law 107-252

AMENDED STATE PLAN AMENDMENT #3

PRESENTED TO: U.S. ELECTION ASSISTANCE COMMISSION

Tom Schedler
Secretary of State
November 23, 2010

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OVERVIEW OF THE LOUISIANA STATE PLAN

The original State Plan for Louisiana was developed jointly by the Department of State and the Department of Elections and Registration in conjunction with the Louisiana Help America Vote Advisory Committee and the Governor. It detailed the plans, budget, and goals that Louisiana sought to attain in its election and voter registration process using funds authorized by the Help America Vote Act of 2002 (HAVA) within the deadlines established in the Act. The State Plan for Louisiana was amended on November 10, 2006 and September 16, 2008.

The State of Louisiana will receive additional Title II federal funds in the amount of $1,496,386 for federal fiscal year 2009 and $1,047,470 for federal fiscal year 2010. The Louisiana State Plan is being amended again to reflect the additional funding and activities that will be conducted with the new federal allocations.

MEETING THE REQUIREMENTS OF HAVA

SECTION 1: How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under Section 251(a)(2), to carry out other activities to improve the administration of elections. (Section 254(a)(1), 42 U.S.C. §15404(a)(1))

Section 1.6 Other activities to improve the administration of elections:

The State of Louisiana issued a certification pursuant to 42 U.S.C. §15401(b)(2)(B) on September 19, 2008, that the state will use requirements payments to carry out activities to improve the administration of elections for Federal office in an amount that will not exceed an amount equal to the minimum payment amount applicable to the State under 42 U.S.C. §15402(c). The current minimum payment amount applicable to the State is $13,021,803. This will also apply for future requirements payments that may be allocated to the State. These activities will include, but not be limited to, the following:

•Act 135 of the 2008 Regular Session of the Louisiana Legislature continued the program authorizing early voting at additional locations and if the program is expanded, the Department of State may need to procure additional voting systems and equipment.

•Complying with the requirements of the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act) for military and overseas voters.

•Providing improvements and enhancements as required by the MOVE Act for military and overseas voters.

•Establishing and using an online educational training program for election officials and poll workers (commissioners) through the Department of State's website.

•Continuing the project to provide images of voter registration documents for disaster recovery, expediting the processing of absentee by mail applications and absentee by mail ballots, expediting the processing of provisional ballots and providing continuity of business in the offices of the Registrars of Voters.

•Improvements to the Elections Registration and Information Network (ERIN system) to support federal elections including:

Implementation of new technology to read the magnetic stripe on a Louisiana driver's license and capture electronic signatures during early voting in an effort to minimize processing time.

Upon authorization of the Louisiana legislature, expand online voter registration capabilities by allowing registered voters to request an absentee by mail ballot online.

Improve the application to support federally mandated reapportionment in 2011.

Implementation of additional GIS functionality to improve geocoding of addresses and precinct and district management.

Improve the ERIN system reporting capabilities by building a data warehouse that can be used to provide federally required statistical data and analysis.

Establish and implement a strategy for electronic data archiving to prevent future system failures due to excessive data storage requirements.

Implementation of an emergency process for securely uploading election results to the ERIN system on election night in the event the Clerk of Court's office experiences power or network outages.

Achieving Section 508 of the Rehabilitation Act of 1973, as amended, compliance on the Department of State's websites and all voter/elections applications in order to better meet the needs of the disability community.

•Analyzing the business processes involved in elections and automating the form submission and approval process of manual forms used by the Department of State during the election cycles.

Upon the issuance of a certification pursuant to 42 U.S.C. §15401(b)(2)(A) that the State has implemented the requirements of Title III of HAVA, the State will be allowed to use the Title II requirements payments to carry out other activities to improve the administration of elections for Federal office in an amount that exceeds the amount equal to the minimum payment amount applicable to the State under 42 U.S.C. §15402(c). This will also apply for future requirements payments that may be allocated to the State.

MANAGING DISBURSEMENT OF HAVA FUNDS

SECTION 2. How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of: (A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and (B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8). (Section 254(a)(2), 42 U.S.C. §15404(a)(2))

Louisiana's ERIN system is funded solely through Louisiana's annual state appropriations bill. In 2009, the Louisiana Secretary of State (LASOS) system (candidate qualifying, ballots, commissions, offices and races; election administration; and election results) was merged into the ERIN system. The network operates in all parishes without any expense to the parish governing authorities.

All HAVA and state general funds are expended through Louisiana's Integrated Statewide Information System (ISIS) and follow the criteria of eligibility contained in the Department of State's HAVA Financial Accounting and Administrative Policy for allowable expenses and the Louisiana Procurement Code.

In Louisiana, the procurement of voting systems is done by the Department of State on a state level rather than at a parish level. As a result, there are no distributions of HAVA requirements payments for the procurement of voting systems to parishes, units of local government or other entities.

All other HAVA requirements payments are paid through the Department of State; however, in the event that requirements payments are distributed to parishes, the

parishes will be required to provide all necessary documentation to substantiate expenses to be reimbursed to the parish.

All funds expended under HAVA are subject to financial and compliance audits through the following: federal auditors; the Louisiana Legislative Auditor; Louisiana Division of Administration auditors; Louisiana Inspector General's Office; and the Department of State's Internal Audit Division.

EDUCATIONAL PROGRAMS

Section 3. How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III. (Section 254(a)(3), 42 U.S.C. §15404(a)(3))

Section 3.1 Election Official Education and Training:

The Department of State will continue to prepare training DVDs for the Clerks of Court and Registrars of Voters to use for elections for Federal office with specific information relating to the races that are on the ballot.

The Department of State will continue to use the LASOSNET/ROV and LASOSNET/COC/ERIN applications to provide training materials for the Clerks of Court and Registrars of Voters relating to the following: complying with the requirements of the MOVE Act, provisional voting, tabulation and counting of provisional ballots, absentee by mail instructions for federal elections and other relevant federal election information.

Section 3.2 Poll Worker Training:

The Informational Pamphlet for Election Day Voting that is used to train the election poll workers (commissioners) will continue to be revised to incorporate federal and state legislative changes relating to elections for Federal office.

The Department of State will continue work on the development of online training for poll workers (commissioners), including information on qualifying to serve as a poll worker (commissioner) and election procedures for existing poll workers (commissioners).

Section 3.3 Voter Education:

The Department of State will continue to implement a comprehensive voter education program to comply with the requirements of Act 286 of the 2003 Regular Session of the Louisiana Legislature and the following activities are included in the program:

•Expansion of website information on registration and voting, including a voter portal to provide access to voter specific election information relating to elections for Federal office.

•Instructional presentations on the Department of State's website relating to the use of the voting systems and information for voters with disabilities.

•Dissemination of public service announcements for voter education and registration information.

•Conducting seminars for voter education and registration, including voting rights seminars for the elderly and individuals with disabilities.

•Providing educational materials to military and overseas voters, including information required by the MOVE Act.

STATE BUDGET

SECTION 6. The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on: A) the costs of the activities required to be carried out to meet the requirements of Title III; B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and C) the portion of the requirements payment which will be used to carry out other activities. (Section 254 (a)(6), 42 U.S.C. §15404(a)(6))

Title II Funds (Requirements Payments):

Louisiana has additional allocations of Title II federal funds in the amounts of $1,496,386 for federal fiscal year 2009 and $1,047,470 for federal fiscal year 2010. Pursuant to the provisions of Title II of HAVA, the State of Louisiana must provide a state match of five percent of the total of the requirements payments received which is $133,888 for the 2009 and 2010 federal funds. Louisiana's required state match for all Title II federal funds is $2,070,125. As of August 31, 2010, Louisiana has provided a total state match of $5,647,757.

Annually, federal funds, interest funds collected and state funds are allocated to HAVA in the Department of State's budget request and annual state appropriations bill. Any future allocations of requirements payments will be added to the federal funds budget allocations and will be utilized to improve the administration of elections for Federal office, including but not limited to, complying with the requirements of the MOVE Act, providing improvements and enhancements required by the MOVE Act, establishing on-line education training programs, imaging voter registration documents and providing enhancements to the ERIN system. These funds will continue to be requested and appropriated until all funds appropriated to HAVA have been expended.

Budget for Title II Federal Expenses Based Upon Amendment #2 to the Louisiana State Plan dated September 16, 2008

Budget Item	Amendment #2, Title II federal funds budget balance	Unencumbered Title II federal funds budget balance as of 8/31/10
1) Enhancement, improvement, upgrade and acquisition of equipment for voting systems for absentee by mail voting, early voting and election day voting; purchase of additional voting systems for early voting and election day voting, including installation, implementation and training; and security of voting systems and registration system for early voting at remote sites. 2) Statewide voter registration database, including software and hardware, and services to upgrade/replace obsolete software and hardware for Clerks of Court, Registrars of Voters and Secretary of State to provide access to ERIN and improve voter registration, ballot preparation and voting system programming. 3) Implementation of technology to significantly enhance and improve voter registration, absentee and election day voting and reporting of activities. These improvements will require significant investments in hardware, software and services both at the state and local level. Initiatives will be focused on reducing manual data entry and processing, insuring the integrity of the process through more automated records retention, development of more secure, direct, interactive and integrated connections between local, state and federal agencies to insure proper list maintenance, web enabling functions making it easier for the citizenry to update their records and providing stakeholders with significantly enhanced statistical and reporting capabilities. 4) Implementation of on-line election official education and training and poll worker training. 5) Activities to improve the administration of elections for Federal office.	$1,239,263	$0
Voter education and outreach, election official education and training, and poll worker training.	$500,000	$0
Development of state plan(s), production of reports, monitoring of performance goals, fiscal management and management of the state plan.	$1,000	$0
TOTAL TITLE II FEDERAL FUNDS (AMENDMENT #2)	**$1,740,263**	**$0**

Budget for Title II Federal Expenses Based Upon Amendment #3 to the Louisiana State Plan

The Department of State will apply for additional funding in the amount of $2,543,856 upon issuance of a certification to the U.S. Election Assistance Commission. These funds and all future interest collections will be utilized to improve the administration of elections for Federal office, including but not limited to, the activities listed below. As of June 30, 2010, Louisiana has received $3,531,008 in interest collections and all of the accumulated interest has been expended or encumbered.

Budget Item	Amendment #3, Title II federal funds budget balance
1) Enhancement, improvement, upgrade and acquisition of equipment for voting systems and tabulating and printing equipment for absentee by mail voting, early voting and election day voting; purchase of additional voting systems and tabulating and printing equipment for absentee by mail voting, early voting and election day voting, including installation, implementation and training; and security of voting systems and registration system for early voting at remote sites. 2) Statewide voter registration and elections database, including software, hardware and services to provide access to ERIN and improve voter registration, ballot preparation, voting system programming and elections processing. 3) Implementation of technology to significantly enhance and improve voter registration, absentee by mail voting, early voting and election day voting and reporting of activities. Initiatives will be focused on reducing manual data entry and processing, insuring the integrity of the process through more automated records retention, development of more secure, direct, interactive and integrated connections between local, state and federal agencies to insure proper list maintenance, web enabling functions making it easier for the citizenry to update their records and providing stakeholders with significantly enhanced statistical and reporting capabilities. 4) Implementation of on-line election official education and training and poll worker training. 5) Complying with the requirements of the MOVE Act. 6) Providing improvements and enhancements required by the MOVE Act. 7) Continuation of the scanning project for voter registration documents. 8) Activities to improve the administration of elections for Federal office.	$2,543,856
TOTAL TITLE II FEDERAL FUNDS BUDGET BALANCE (AMENDMENT #3)	**$2,543,856**

Any and all future requirements payment allocations received by the State of Louisiana and interest on those funds shall be utilized to improve the administration of elections for Federal office, including but not limited to, complying with the requirements of the MOVE Act, providing improvements and enhancements required by the MOVE Act, establishing on-line education training programs, imaging voter registration documents and providing enhancements to the ERIN system.

LOUISIANA'S MAINTENANCE OF EXPENDITURE

SECTION 7. How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. (Section 254(a)(7), 42 U.S.C. §15404(a)(7))

Louisiana has a state-driven election system and Louisiana has and will maintain the expenditures of the state for activities funded by the payment at a level equal to or greater than the level of such expenditures for Louisiana for expenditures consistent with the requirements of Title III of HAVA. Pursuant to the provisions of EAC Maintenance of Expenditure Policy effective June 28, 2010, the fiscal year to be used as the base shall be the fiscal year ending prior to November 2000 and the state fiscal year 1999-2000 ending June 30, 2000 is the base year.

PERFORMANCE GOALS AND MEASURES

SECTION 8. How the state will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. (Section 254(a)(8), 42 U.S.C. §15404(a)(8))

Section 8.7 Integration of the existing LASOS system into the ERIN system:

1) Deadline: September 30, 2009.

2) Criteria: Previously, the LASOS system (candidate qualifying, ballots, commissions, offices and races; election administration; and election results) and the ERIN system (registration) were maintained in two separate systems requiring duplicate maintenance of essential elements for building elections. The mechanisms by which elections are conducted are migrated into the voter registration system to have a single system of data. This integration benefits all future federal elections.
3) How Criteria are Judged: Success of meeting this performance goal is based on the completion of the migration to one statewide system for all election matters. The State of Louisiana met its goal in 2009.

4) Responsible Official: Secretary of State in conjunction with the Clerks of Court and Registrars of Voters.

Section 8.9 Implementation of GIS system and other measures to improve redistricting and the reapportionment process:

1) Deadline: July, 2012.

2) Criteria: With the upcoming federal decennial census, the Department of State needs a more efficient way to manage the reapportionment process and concurrent redistricting of voters due to the current manual determination of correct precincts for voters.

3) How Criteria are Judged: The success of meeting this performance goal will be based on reducing the timeframe for completing the reapportionment process and increasing the accuracy of the process.

4) Responsible Official: Secretary of State in conjunction with the Registrars of Voters.

Section 8.10 Scanning deployment to remaining parishes:

1) Deadline: June 30, 2011.

2) Criteria: Continued implementation of scanning of registration documents to provide images of voter registration documents for protection of documents for disaster recovery; expedite processing of absentee by mail applications and absentee by mail ballots; expedite processing of provisional ballots; and provide business continuity in the offices of the Registrars of Voters, including entering registration data with a higher degree of accuracy.

3) How Criteria are Judged: The success of meeting this performance goal will be based on implementing the scanning project in the remaining parishes within the established timeframe, including providing training to the Registrars of Voters.

4) Responsible Official: Secretary of State in conjunction with the Registrars of Voters.

Section 8.11 Provisional voting tracking:

1) Deadline: Fall, 2010.

2) Criteria: Providing functionality in the ERIN system to track eligible voters who cast provisional ballots that are counted, including providing an automated

mechanism to track provisional ballots that are rejected. Implementing an enhanced website so that a voter can determine if his provisional ballot was counted, and if the ballot was not counted, the reason for the rejection of the ballot.

3) How Criteria are Judged. The success of meeting this performance goal is based on implementing the process within the established timeframe. The State of Louisiana met its goal in 2010.

4) Responsible Official: Secretary of State in conjunction with the Registrars of Voters.

Section 8.13 Complying with the requirements of the MOVE Act:

1) Deadline: 2010 federal general election and subsequent federal elections.

2) Criteria: Implementing the provisions of the MOVE Act to make the State of Louisiana compliant with the Act, including establishing procedures for military and overseas voters to electronically request and receive registration applications, absentee by mail applications and blank absentee by mail ballots.

3) How Criteria are Judged: The success of meeting this performance goal will be based on implementing the procedures required by the MOVE Act by the federal general election in 2010 and for subsequent federal elections.

4) Responsible Official: Secretary of State in conjunction with the Registrars of Voters.

USE OF TITLE I PAYMENT

SECTION 10. If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities. (Section 254(a)(10), 42 U.S.C. §15404(a)(10))

Budget for Title I, Section 101 Federal Expenses Based Upon Amendment #2 to the Louisiana State Plan dated September 16, 2008

Budget Item	Amendment #2, Title I, Section 101 federal funds budget balance	Unencumbered Title I, Section 101 federal funds budget balance as of 8/31/10
1) Enhancement, improvement, upgrade and acquisition of equipment for voting systems for absentee by mail voting, early voting and election day voting; purchase of additional voting systems for early voting and election day voting, including installation, implementation and training; and security of voting systems and registration system for early voting at remote sites. 2) Statewide voter registration database, including software and hardware, and services to upgrade/replace obsolete software and hardware for Clerks of Court, Registrars of Voters and Secretary of State to provide access to ERIN and improve voter registration, ballot preparation and voting system programming. 3) Implementation of technology to significantly enhance and improve voter registration, absentee and election day voting and reporting of activities. These improvements will require significant investments in hardware, software and services both at the state and local level. Initiatives will be focused on reducing manual data entry and processing, insuring the integrity of the process through more automated records retention, development of more secure, direct, interactive and integrated connections between local, state and federal agencies to insure proper list maintenance, web enabling functions making it easier for the citizenry to update their records and providing stakeholders with significantly enhanced statistical and reporting capabilities. 4) Implementation of on-line election official education and training and poll worker training. 5) Purposes outlined in Section 101 of HAVA.	$3,099,289	$2,313,760
TOTAL TITLE I, SECTION 101 FEDERAL FUNDS (AMENDMENT #2)	**$3,099,289**	**$2,313,760**

Budget for Title I, Section 101 Federal Expenses Based Upon Amendment #3 to the Louisiana State Plan

All current and future interest collections will be distributed between the categories listed below as needed and for purposes outlined in Section 101 of HAVA, including improving the administration of elections for Federal office. As of June 30, 2010, Louisiana has received $913,341 in interest collections on Title 1, Section 101 funds and none of the accumulated interest has been expended or encumbered.

Budget Item	Amendment #3, Title I, Section 101 federal funds budget balance
1) Enhancement, improvement, upgrade and acquisition of equipment for voting systems and tabulating and printing equipment for absentee by mail voting, early voting and election day voting; purchase of additional voting systems and tabulating and printing equipment for absentee by mail voting, early voting and election day voting, including installation, implementation and training; and security of voting systems and registration system for early voting at remote sites. 2) Statewide voter registration and elections database, including software, hardware and services to provide access to ERIN and improve voter registration, ballot preparation, voting system programming and elections processing. 3) Implementation of technology to significantly enhance and improve voter registration, absentee by mail voting, early voting and election day voting and reporting of activities. Initiatives will be focused on reducing manual data entry and processing, insuring the integrity of the process through more automated records retention, development of more secure, direct, interactive and integrated connections between local, state and federal agencies to insure proper list maintenance, web enabling functions making it easier for the citizenry to update their records and providing stakeholders with significantly enhanced statistical and reporting capabilities. 4) Implementation of on-line election official education and training and poll worker training. 5) Complying with the requirements of the MOVE Act. 6) Providing improvements and enhancements required by the MOVE Act. 6) Continuation of the scanning project for voter registration documents. 7) Activities to improve the administration of elections for Federal office. 8) Purposes outlined in Section 101 of HAVA.	$2,313,760
TOTAL TITLE I, SECTION 101, FEDERAL FUNDS (AMENDMENT #3)	**$2,313,760**

STATE PLAN MANGAGEMENT

SECTION 11. How the state will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change: A) is developed and published in the Federal Register in accordance with Section 255 in the same manner as the State plan; B) is subject to public notice and comment in accordance with Section 256 in the same manner as the State plan; and C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A). (Section 254(a)(11), 42 U.S.C. §15404(a)(11))

The Secretary of State as the "chief election officer of the state" will continue to be responsible for the ongoing management and implementation of Louisiana's plan with input from the Clerks of Court and Registrars of Voters to continue to comply with the requirements of HAVA.

The State of Louisiana agrees that it may not make any material change in the administration of the State plan unless the change:

1) Is developed and published in the Federal Register in accordance with Section 255 of HAVA in the same manner as the State Plan;

2) Is subject to public notice and comment in accordance with Section 256 of HAVA in the same manner as the State Plan; and

3) Takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register.

CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

SECTION 12. In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and how the State succeeded in carrying out the State plan for such previous fiscal year. (Section 254(a)(12), 42 U.S.C. §15404(a)(12))

Amendment #3 to the state plan dated November 23, 2010 contains changes to the state plan as follows:

1) Updates the activities to improve the administration of elections for Federal office.

2) Updates the activities relating to education programs for election officials, election poll workers (commissioners) and voters.

3) For Title II federal funds, updates the budget allocations and use of the federal funds, increases federal funding by $2,543,856 and updates the use of the future interest accumulations.

4) Provides that future allocations of Title II federal funds will be used to improve the administration of elections for Federal office.

5) Updates and provides additional performance goals and measures that will be used by the State of Louisiana to determine its success in carrying out the plan.

6) For Title I, Section 101 funds, updates the budget allocations and use of the federal funds and updates the use of the current and future interest accumulations.

7) Provides for complying with the requirements of the MOVE Act.

8) Provides for improvements and enhancements required by the MOVE Act.

State of Louisiana's Progress on the Implementation of HAVA:

Provisional Voting:

In the fall of 2010, the Department of State is implementing an additional free access system to allow a provisional voter to search the Department's website by the voter's name and confirm if his vote was counted, and, if his vote was not counted, the reason his vote was not counted.

Computerized Statewide Voter Registration List:

ERIN system upgrades:

The Department of State completed the following major enhancements and programs: candidate inquiry; sample ballots; election results; voter statistics, including registration, early voting and post election statistics; voter portal; provisional voter search; and electronic ballot retrieval for the military and overseas voters. In addition, the Department of State deployed online voter registration in April of 2010.

Records retention:

The project to insure the retention of voter registration records through imaging (scanning), indexing, storage and retrieval of paper documents is ongoing and 49 of the 64 parishes in the State of Louisiana have been completed as of August 31, 2010.

Election Official Education and Training:

In 2010, the Department of State developed and deployed the LASOSNET/ROV and LASOSNET/COC/ERIN applications to provide the Registrars of Voters and Clerks of Court internal training materials, including but not limited to, the following: procedures and instructions for complying with the requirements of the MOVE Act; provisional voting instructions; instructions for tabulation and counting of provisional ballots; absentee by mail instructions; and other relevant elections information for federal elections.

In 2010, the Department of State developed and distributed statewide an instructional DVD for the use of the audio voting keypad that included instructions for parish election officials and election poll workers (commissioners). The instructional DVD was also made available on the Department's website.

Voter Education:

The annual voter registration week authorized by Act 286 of the 2003 Regular Session of the Louisiana Legislature as amended by Act 136 of the 2008 Regular Session of the Louisiana legislature was held August 24 - 28, 2009 and May 10 - 14, 2010.

Informational pamphlets and brochures:

The following additional brochures and pamphlets were developed and distributed to the citizens of Louisiana and to elderly and disability consortiums:

Voting in Louisiana: A How-to-Guide: This brochure provides a concise explanation for potential voters including information on voter registration, the act of voting, voting procedures for military and overseas voting and voting procedures for the elderly and individuals with disabilities.

Voting 101: This brochure is a guide to registering and voting for students who are pursuing a higher education.

Vote and Be Heard: This brochure is designed for high school students with an emphasis on the students who are 17 years of age or older.

State of Louisiana, Voting Rights for the Elderly and Individuals With Disabilities: This brochure contains information on the entire voter registration and voting process for the elderly and individuals with disabilities.

Seminars:

In 2010, the Department of State held nine GEAUX Vote Disability Training Sessions for individuals with disabilities and the elderly and provided information on registration, voting and the congressional closed party primary elections.

HELP AMERICA VOTE ADVISORY COMMITTEE

SECTION 13. A description of the committee which participated in the development of the State plan in accordance with Section 255 and the procedures followed by the committee under such Section and Section 256. (Section 254(a)(13), 42 U.S.C. §15404(a)(13))

In August of 2010, Jay Dardenne, Secretary of State, named the following members to serve on the Louisiana Help America Vote Advisory Committee:

Honorable Jay Dardenne (Chairman)
Secretary of State
Department of State
Post Office Box 94125
Baton Rouge, Louisiana 70804-9125
Secretary of State

Mr. William P. Bryan, III
Assistant Attorney General
Post Office Box 94005
Baton Rouge, Louisiana 70804-9005
Representative of the Office of the Attorney General

Mr. Cloyce Clark
Assistant Executive Counsel to the Governor
Post Office Box 94004
Baton Rouge, Louisiana 70804-9004
Representative of the Governor's Office

Mr. Jason Collier
9929 Mint Drive
Baton Rouge, LA 70809
Representative of the Disabilities Community

Honorable Richard "Rick" Gallot, Jr.
State Representative
Post Office Box 1117
Ruston, Louisiana 71273-1117
Chairman of the House & Governmental Affairs Committee of the Louisiana Legislature (Democrat)

Honorable Jon A. Gegenheimer
Clerk of Court, Jefferson Parish
Post Office Box 10
Gretna, Louisiana 70054
Chief Parish Election Official in the second largest jurisdiction
Designee: Brian Freese

Honorable Mark J. Graffeo
Clerk of Court, West Baton Rouge Parish
Post Office Box 107
Port Allen, Louisiana 70767
Chief Parish Election Official

Honorable David Heitmeier
State Senator
3501 Holiday Drive
Suite 225
New Orleans, Louisiana 70114
Representative of the Senate & Governmental Affairs Committee of the Louisiana Legislature (Democrat)

Honorable Robert W. "Bob" Kostelka
State Senator
Post Office Box 2122
Monroe, Louisiana 71207
Chairman of the Senate & Governmental Affairs Committee of the Louisiana Legislature (Republican)

Ms. Angie Rogers LaPlace
Commissioner of Elections
Post Office Box 94125
Baton Rouge, Louisiana 70804
Representative of the Louisiana Department of State

Honorable John Moreau
Registrar of Voters, St. Landry Parish
Post Office Box 818
Opelousas, Louisiana 70571-0818
Representative of the Registrars of Voters

Honorable Arthur Morrell
Clerk of the Criminal Court, Orleans Parish
2700 Tulane Avenue, Room 115
New Orleans, Louisiana 70119
Chief Parish Election Official in the largest jurisdiction

Honorable Karen Carter Peterson
State Senator
1215 Prytania Street, Suite 364
New Orleans, Louisiana 70130
Representative of the Louisiana Legislative Black Caucus

Honorable Linda Rodrigue
Registrar of Voters, Terrebonne Parish
Post Office Box 9189
Houma, Louisiana 70361
Representative of the Registrars of Voters

Honorable John Russell
Registrar of Voters, Tangipahoa Parish
Post Office Box 895
Amite, Louisiana 70422-0895
Representative of the Registrars of Voters

Ms. Lois V. Simpson, Executive Director
The Advocacy Center
1010 Common Street, Suite 2600
New Orleans, Louisiana 70112-2429
Representative of the Disabilities Community
Designee: Stephanie Patrick

Honorable M. J. "Mert" Smiley
State Representative
18590 Highway 16, Suite 5
Port Vincent, Louisiana 70726
Representative of the House & Governmental Affairs Committee of the Louisiana Legislature (Republican)

The Louisiana Help America Vote Advisory Committee met on September 27, 2010 to consider the draft of the Preliminary Amended State Plan Amendment #3 and adopted the preliminary amended state plan by a unanimous vote of the members present.

The Preliminary Amended State Plan Amendment #3 was made available on the Department of State's website for public inspection and comment for more than thirty days. In addition, the Department of State published notice in the Official State Journal on October 5, 2010 that the Preliminary Amended State Plan Amendment #3 was available at the office of the Department of State, Legal Division, for public inspection and comment. The Department of State did not receive any public comments as of the close of business on November 5, 2010 regarding the Preliminary Amended State Plan Amendment #3.

COMPLYING WITH THE REQUIREMENTS OF THE MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT

SECTION 14. How the State will comply with the provisions and requirements of and amendments made by the Military and Overseas Voter Empowerment Act. (Section 254(a)(14), 42 U.S.C. §15404(a)(14))

Act 624 of the 2010 Regular Session of the Louisiana Legislature implements the provisions of the MOVE Act as follows:

•Authorizes a military or overseas applicant to mail or transmit electronically a written request to register to vote to the registrar of voters and authorizes the registrar of voters to mail or transmit electronically to the applicant the application form for registration.

•Provides that electronic mail addresses of registered voters shall not be disclosed by the Registrar of Voters or the Department of State and shall not be included on commercial registration lists.

•Requires the Secretary of State to prepare instructions for use of the special ranking ballots for military and overseas voters and provide instructions for voting by mail using an electronically transmitted ballot.

•Allows the special ranking ballots to be transmitted electronically for a federal general election to military and overseas voters.

•Sets forth procedures for the Registrars of Voters to electronically transmit federal general election ballots to military and overseas voters.

•Authorizes a military or overseas voter to transmit the voted ballot by mail and use the "Security Envelope" from the Federal Write-In Absentee Ballot.

•Requires the Secretary of State, at least 45 days before each congressional general election, to deliver to each Registrar of Voters special absentee by mail ballots, envelopes, certificates and instructions to be used by military and overseas voters.

•Provides the procedures for military and overseas voters to vote the federal general election ballots that were transmitted electronically and requires the voters to return the voted ballots by mail to the Registrars of Voters.

•Provides the procedures for the parish board of election supervisors to count ballots that were transmitted electronically to the military and overseas voters.

•Clarifies that a ballot shall not be rejected as containing a distinguishing mark if the ballot was transmitted electronically to a military or overseas voter.

•Allows a military or overseas voter who made a timely application to vote absentee by mail and who did not receive absentee by mail ballots to use the Federal Write-In Absentee Ballot to vote in presidential and congressional elections. (Effective December 31, 2010.)

ERIN System Changes To Comply With The MOVE Act:

The ERIN system was significantly enhanced to add the functionality necessary to send military and overseas voters federal ranking ballots electronically. The absentee by mail program needed complex changes to record each voter's request to receive his federal ranking ballot electronically. With the changes, upon entering a request for a ballot by electronic mail, the Registrar of Voters enters the ballot information in the ERIN system. If the voter is eligible to receive the federal ranking ballot items, a function allows the Registrar of Voters to send an electronic message to the voter. The electronic message provides the voter with a link to a uniquely identified secure website. Using the website link, the voter enters either his month and year of birth or his zip code and a captcha code (challenge response test). After successfully signing on to the site, ballots, certificates, waivers and instructions are available for the voter to download. The website also provides the voter information on the status of receipt of his ballot.

An additional report was created and changes were made to insure that the other absentee reports continued to function as necessary with the new request type of electronic mail allowed. Extensive documentation of the changes and new process for the Registrars of Voters were developed and distributed statewide.

All of the minimum required functionality to meet the requirements of the MOVE Act was deployed and the Registrars of Voters were authorized to send federal ranking ballots electronically on July 30, 2010.

Future Enhancements To The ERIN System For Military And Overseas Voters:

•Give the military and overseas voters the ability to mark their ballots online before printing and returning the ballots by mail.

•Provide electronic delivery of state and local ballots, if authorized by state law.

•Make the federal ballots available to the voters 45 days before the election for subsequent federal elections.

Future Enhancements To The ERIN System For Military And Overseas Voters:

- Give the military and overseas voters the ability to mark their ballots online before printing and returning the ballots by mail.
- Provide electronic delivery of state and local ballots, if authorized by state law.
- Make the federal ballots available to the voters 45 days before the election for subsequent federal elections.

[FR Doc. 2010–30569 Filed 12–6–10; 8:45 am]

BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

[OE Docket No. EA–220–C]

Application To Export Electric Energy; NRG Power Marketing LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: NRG Power Marketing LLC (NRGPML) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or requests to intervene must be submitted on or before January 6, 2011.

ADDRESSES: Comments, protests or requests to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On May 3, 2000 the Department of Energy (DOE) issued Order No. EA–220, which authorized NRGPML to transmit electric energy from the United States to Canada as a power marketer using existing international transmission facilities for a two-year term. DOE renewed the NRGPML export authorization two additional times; in Order No. EA–220–A on September 24, 2002 and in Order No. EA–220–B on August 23, 2005. Order No. EA–220–B expired on August 23, 2010. On September 15, 2010, NRGPML filed an application with DOE for renewal of the export authority contained in Order No. EA–220–B for an additional five-year term.

The electric energy that NRGPML proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by NRGPML have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with and received by DOE on or before the date listed above.

Comments on the NRGPML application to export electric energy to Canada should be clearly marked with Docket No. EA–220–C. An additional copy is to be filed directly with Alan Johnson, NRG Power Marketing LLC, 211 Carnegie Center, Princeton, NJ 08540. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC, on December 2, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–30624 Filed 12–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–191–D]

Application To Export Electric Energy; Sempra Energy Trading LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Sempra Energy Trading LLC (SET) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or requests to intervene must be filed and received by DOE on or before December 22, 2010.

ADDRESSES: Comments, protests or requests to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On November 10, 1998, the Department of Energy (DOE) issued Order No. EA–191 which authorized Sempra Energy Trading Corp. (SETC) to transmit electric energy from the United States to Canada for a two-year term as a power marketer using existing international transmission facilities. DOE renewed the SETC export authorization two additional times: on January 19, 2001 in Order No. EA–191–A and again on April 5, 2006 in Order No. EA–191–B. Order No. EA–191–B expired on November 5, 2010. On April

10, 2008, DOE issued Order No. EA–191–C, amending EA–191–B to authorize SETC to export under its new name, Sempra Energy Trading LLC (SET), under the same terms contained in Order No. EA–191–B. On October 12, 2010, SET filed an application with DOE for renewal of the export authority contained in Order No. EA–191–C for an additional five-year term.

On November 23, 2010, SET supplemented its application by requesting expedited treatment of their application. In its letter, SET indicated that due to an administrative oversight it had not applied to renew its authorization in sufficient time to allow for normal DOE processing. SET recognized that its authority to export electric energy to Canada had expired and asserted that it has not traded electric energy since expiration of Order No. EA–191–B and that it would not do so until and unless it received renewed authority to export at the conclusion of this proceeding. In response to SET's request for expedited treatment, DOE has shortened the public comment period to 15 days.

The electric energy that SET proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by SET have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with and received by DOE on or before the date listed above.

Comments on the SET application to export electric energy to Canada should be clearly marked with Docket No. EA–191–D. An additional copy is to be filed directly with Ted Chila, Senior Vice President, Sempra Energy Trading LLC, 58 Commerce Road, Stamford, CT 06902. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC, on December 2, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–30625 Filed 12–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Comments on Helium-3 Use in the Oil and Natural Gas Well Logging Industry

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Request for Comments.

SUMMARY: The Department of Energy (DOE) Office of Oil and Natural Gas is seeking public comments on the volumes and uses of Helium-3 by the oil and gas well logging industry.

DATES: Written comments and information are requested on or before 5 p.m. Eastern time on February 1, 2011.

ADDRESSES: Interested persons may submit information by any of the following methods:

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

E-mail: Edith.Allison@hq.doe.gov. Include "Helium-3 Request for Comments" in the subject line of the message.

Postal Mail: Edith Allison, U.S. Department of Energy, Office of Fossil Energy, Office of Oil and Natural Gas, Room 3E–028, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, *Edith.Allison@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE Office of Oil and Natural Gas is responsible for allotting 1,000 liters of Helium-3 for use by the well logging industry in Fiscal Year (FY) 2011 and for projecting the FY 2012 Helium-3 needs so that an industry allotment can be set aside for FY 2012. The Office of Oil and Natural Gas seeks information to improve its understanding of the need for Helium-3 and the diversity of the user community so that it can tailor its allocation process to best support the efficient domestic production of oil and natural gas.

Background:

Helium-3 is a non-radioactive isotope of Helium that is a byproduct of the decay of Tritium. Its main use is for neutron detection devices used in scientific research, national security and oil and gas well logging. The US helium-3 stockpile, which is held by the DOE, is not adequate to meet the current demand. Therefore, DOE is considering an allotment process.

Allotment Process Considerations:

In developing its allotment process, DOE seeks information on the uses of Helium-3 by members of the oil and gas well logging industry. DOE seeks information, for example, on whether companies manufacture neutron detectors used by the well logging industry or wireline or Logging-While-Drilling tools incorporating neutron detectors, and whether companies purchase or lease logging tools that contain neutron detectors.

DOE also seeks information on the volumes of Helium-3 anticipated by the oil and gas well logging industry during the 2-year allotment under consideration by DOE. DOE seeks information on estimates of oil and gas required by companies for fiscal years 2011 (October 1, 2010 through September 30, 2011) and 2012 (October 1, 2011 through September 30, 2012).

DOE also seeks information on the recycling and reclamation of Helium-3 gas. DOE understands that Helium-3 gas can be recycled or reclaimed from many inoperable neutron detectors. DOE seeks information on whether companies plan to reclaim Helium-3 from malfunctioning devices and if so, how much Helim-3 companies anticipate reclaiming.

In allotting Helium-3, DOE would expect to give preference to devices for use in the United States. Therefore, DOE seeks information on how much companies' expected Helium-3 will be for devices used outside the United States.

Further Information on Submitting Information:

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential

deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

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

Issued in Washington, DC, on November 30, 2010.

Christopher A. Smith,

Deputy Assistant Secretary for Oil and Natural Gas.

[FR Doc. 2010–30632 Filed 12–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13879–000]

Kahawai Power 2, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 29, 2010.

On November 15, 2010, Kahawai Power 2, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Makaweli River Water Power Project, located in Kauai County, in the state of Hawaii. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) A proposed 6-foot-high and 40-foot-long reinforced concrete weir and intake structure on the Kahana stream that will maintain a normal surface elevation of 2,200 feet msl; (2) a proposed 8-foot-high and 40-foot-long reinforced concrete weir and intake structure on the Mokuone stream that will maintain a normal surface elevation of 2,200 feet msl; (3) a new 31,000-foot-long, steel penstock; (4) a proposed 1.500-foot-long, 48-inch diameter, underground tunnel to convey water from the Mokuone Diversion to the Mokuone Feeder Penstock; (5) a new 1,750-foot-long, 36-inch diameter steel feeder penstock to collect additional flows from the Mokuone Diversion; (6) a proposed 70-foot-long, 40-foot-wide, reinforced concrete powerhouse; (7) a proposed 90-foot-long, 15-foot-wide tailrace; (8) an anticipated proposed transmission line approximately 4.25 miles in length and a voltage of 69kV; (9) a new gravel roadway approximately 1 mile in length; (10) a proposed average annual generation of 23,900 megawatt-hours.

Applicant Contact: Daniel Irvin, CEO, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 252–7631.

FERC Contact: Mary Greene, 202–502–8865.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13879) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30593 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, and Motions To Intervene

November 30, 2010.

Project No. 13741–000
Lock + Hydro Friends Fund XLV
Project No. 13748–000
FFP Missouri 9, LLC
Project No. 13771–000
Solia 8 Hydroelectric, LLC
Project No. 13789–000
Point Marion Hydro, LLC

On May 18, 2010, Lock+ Hydro Friends Fund XLV, FFP Missouri 9, LLC, and Solia 8 Hydroelectric, LLC filed applications, and on May 19, 2010, Point Marion Hydro, LLC filed an application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Point Marion Lock and Dam located on the Monongahela River in Fayette County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Descriptions of the proposed Point Marion Lock and Dam Projects:

Lock+ Hydro Friends Fund XLV's project (Project No. 13741–000) would consist of: (1) Two 57-foot-high, 75-foot-long prefabricated concrete walls attached to the downstream side of the Corps dam which would support one frame module; (2) each frame module would be 109 feet long and weigh 1.16 million pounds and contain 10 generating units with a total combined capacity of 19.0 megawatts (MW); (3) a new switchyard containing a transformer; and (4) a proposed 11,000-foot-long, 36.7-kilovolt (kV) transmission line connecting to an existing substation. The proposed project would have an average annual generation of 83.277 gigawatt-hours

(GWh), which would be sold to a local utility.

Applicant Contact: Mr. Mark R. Stover, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x711.

FFP Missouri 9, LLC's project (Project No. 13748–000) would consist of: (1) An excavated intake channel slightly longer and wider than the powerhouse; (2) a 200-foot-long, 250-foot-wide, 50-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.6 MW; (3) an excavated tailrace channel slightly longer and wider than the powerhouse; and (4) a proposed 11,500-foot-long, ranging from 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 46.4 GWh, which would be sold to a local utility.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone (978) 283–2822.

Solia 8 Hydroelectric, LLC's project (Project No. 13771–000) would consist of: (1) A proposed 300-foot-long excavated power canal; (2) a 200-foot-long, 250-foot-wide, 50-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.6 MW; (3) a 200-foot-long excavated tailrace; and (4) a proposed 11,500-foot-long, ranging from 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 46.4 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; phone (952) 544–8133.

Point Marion Hydro, LLC's project (Project No. 13789–000) would consist of: (1) A proposed 180-foot-long excavated power canal; (2) a proposed powerhouse containing two generating units having a total installed capacity of 5.6 MW; (3) a 130-foot-long excavated tailrace; and (4) a proposed 3.0-mile-long, 69.0-kV transmission line. The proposed project would have an average annual generation of 18.6 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Brent Smith, Symbiotics, LLC., P.O. Box 535, Rigby, ID 83442; phone (208) 745–0834.

FERC Contact: Tim Looney (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13741–000, 13748–000, 13771–000, or 13789–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30595 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–39–000]

Dominion Transmission, Inc.; Notice of Application

November 30, 2010.

Take notice that on November 18, 2010, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA, 23219 filed an application in Docket No. CP11–39–000 pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate its Northeast Expansion Project. Specifically, the Northeast Expansion Project consists of a total of 32,440 horsepower (hp) of compression to be installed at three existing compressor stations in Pennsylvania as follows: 6,130 hp at DTI's Punxsutawney Compressor Station in Jefferson and Indiana Counties, 10,310 hp at its Ardell Compressor Station Elk County, and 16,000 hp at its Finnefrock Compressor Station in Clinton County. In addition, DTI proposes to install a new meter station and associated facilities at its Punxsutawney Compressor Station and to upgrade an existing regulator station at its Leidy Station in Clinton County. DTI states that it will provide 200,000 dekatherms per day (Dt/d) of firm transportation service to its existing interconnect with Transcontinental Gas Pipe Line Company, LLC (Transco) at the Liedy Station. The estimated cost of the Northeast Expansion Project is approximately $97.3 million. A more detailed description of the project is available in the application which is on file with the Commission and open for public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Any questions regarding this application should be directed to Brad A. Knisley, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, (804) 771–4412 (phone), (804) 771–4804 (fax) or *brad.a.knisley@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30601 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, and Motions To Intervene

November 30, 2010.

Project No. 13737–000
Lock + Hydro Friends Fund XLIV
Project No. 13759–000
FFP Missouri 11, LLC
Project No. 13766–000
Solia 5 Hydroelectric, LLC
Project No. 13787–000
Maxwell Hydro, LLC

On May 18, 2010, Lock+ Hydro Friends Fund XLIV, FFP Missouri 11, LLC, and Solia 5 Hydroelectric, LLC filed applications, and on May 19, 2010, Maxwell Hydro, LLC filed an application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Maxwell Lock and Dam located on the Monongahela River in Washington County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Descriptions of the proposed Maxwell Lock and Dam Projects:

Lock+ Hydro Friends Fund XLIV's project (Project No. 13737–000) would consist of: (1) Two 61-foot-high, 75-foot-long prefabricated concrete walls attached to the downstream side of the Corps dam which would support one frame module; (2) each frame module would be 109 feet long and weigh 1.16 million pounds and contain 10 generating units with a total combined capacity of 19.0 megawatts (MW); (3) a new switchyard containing a transformer; and (4) a proposed 15,000-foot-long, 36.7-kilovolt (kV) transmission line connecting to an existing substation. The proposed project would have an average annual generation of 83.277 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. Mark R. Stover, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x711.

FFP Missouri 11, LLC's project (Project No. 13759–000) would consist of: (1) An excavated intake channel slightly longer and wider than the powerhouse; (2) a 60-foot-long, 110-foot-wide, 40-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.0 MW; (3) an excavated tailrace channel slightly longer and wider than the powerhouse; and (4) a proposed 13,100-foot-long, ranging from 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 71.6 GWh, which would be sold to a local utility.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone (978) 283–2822.

Solia 5 Hydroelectric, LLC's project (Project No. 13766–000) would consist of: (1) A proposed 300-foot-long excavated power canal; (2) a 60-foot-long, 110-foot-wide, 40-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.0 MW; (3) a 200-foot-long excavated tailrace; and (4) a proposed 13,100-foot-long, ranging from 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 71.6 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; phone (952) 544–8133.

Maxwell Hydro, LLC's project (Project No. 13787–000) would consist of: (1) A proposed 170-foot-long excavated power canal; (2) a proposed powerhouse containing four generating units having a total installed capacity of 20.3 MW; (3) a 190-foot-long excavated tailrace; and (4) a proposed 3.0-mile-long, 69.0-kV transmission line. The proposed project would have an average annual generation of 62.0 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Brent Smith, Symbiotics, LLC., P.O. Box 535, Rigby, ID 83442; phone (208) 745–0834.

FERC Contact: Tim Looney (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13737–000, 13759–000, 13766–000, or 13787–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30600 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13734–000; Project No. 13754–000; Project No. 13765–000; Project No. 13783–000; Project No. 13790–000]

Lock + Hydro Friends Fund XIVI; FFP Missouri 17, LLC; Solia 3 Hydroelectric, LLC; Three Rivers Hydro, LLC; Hildebrand Hydro, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, and Motions To Intervene

NOVEMBER 30, 2010.

On May 18, 2010, Lock + Hydro Friends Fund XLVI, FFP Missouri 17, LLC, Solia 3 Hydro, LLC, and Three Rivers Hydro LLC, and on May 19 Hildebrand Hydro, filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Hildebrand Lock & Dam located on the Monongahela River in Monongahela County, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Descriptions of the proposed Hildebrand Lock & Dam Projects:

Lock+ Hydro Friends Fund XLVI's project (Project No. 13734–000) would consist of: (1) Two 69-foot-high, 75-foot-long prefabricated concrete walls attached to the downstream side of the Corps dam which would support one frame module; (2) each frame module would be 109 feet long and weigh 1.16 million pounds and contain 10 generating units with a total combined capacity of 20.0 megawatts (MW); (3) a new switchyard containing a transformer; and (4) a proposed 1,000-foot-long, 69-kilovolt (kV) transmission line connecting to an existing substation. The proposed project would have an average annual generation of 87.660 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. Mark R. Stover, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x711.

FFP Missouri 17, LLC's project (Project No. 13754–000) would consist of: (1) An excavated intake channel slightly longer and wider than the powerhouse; (2) a 60-foot-long, 110-foot-wide, 40-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.0 MW; (3) an excavated tailrace channel slightly longer and wider than the powerhouse; and (4) a proposed 1,600-foot-long, ranging from 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 40.0 GWh, which would be sold to a local utility.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone (978) 283–2822.

Solia 3 Hydroelectric, LLC's project (Project No. 13765–000) would consist of: (1) A proposed 300-foot-long excavated power canal; (2) a 60-foot-long, 110-foot-wide, 40-foot-high proposed powerhouse containing two generating units having a total installed capacity of 10.0 MW; (3) a 200-foot-long excavated tailrace; and (4) a proposed 1,600-foot-long, ranging from 34.0 to 230-kV, transmission line. The proposed project would have an average annual generation of 40.0 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; phone (952) 544–8133.

Three Rivers Hydro, LLC's project (Project No. 13783–000) would consist of: (1) a proposed 75-foot-long excavated power canal; (2) a 45-foot-long, 110-foot-wide, 40-foot-high proposed powerhouse containing two generating units having a total installed capacity of 4.5 MW; (3) a 55-foot-long excavated tailrace; and (4) a proposed 1,600-foot-long, 138-kV transmission line. The proposed project would have an average annual generation of 24.0 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Joseph Watt, Esq., Three Rivers Hydro, LLC, 316 South Clinton Street, Suite 4, Syracuse, NY 13202; phone (315) 477–9914.

Hildebrand Hydro LLC's project (Project No. 13790–000) would consist of: (1) A proposed 70-foot-long excavated power canal; (2) a proposed powerhouse containing one generating unit having a total installed capacity of 4.3 MW; (3) a 70-foot-long excavated tailrace; and (4) a proposed 0.2-mile-long, 69.0-kV transmission line. The proposed project would have an average annual generation of 13.6 GWh, which would be sold to a local utility.

Applicant Contact: Mr. Brent Smith, Symbiotics, LLC., P.O. Box 535, Rigby, ID 83442; phone (208) 745–0834.

FERC Contact: Tim Looney (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your

name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13734–000, 13754–000, 13765–000, 13783–000 or 13790–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30599 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–130]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 30, 2010.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2146–130.

c. *Date Filed:* November 11, 2010.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* The proposed non-project use is located on Logan Martin Lake, in Talladega County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Mr. Keith E. Bryant, Senior Engineer, Alabama Power Company, 600 18th Street North, Birmingham, AL, 35203, (205) 257–1403.

i. *FERC Contact:* Shana High at (202) 502–6874; *shana.high@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 30, 2010.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and address and contact information at the end of your comments.

k. *Description of Request:* Alabama Power Company filed an application seeking Commission authorization to permit The City of Riverside, AL to redevelop an existing commercial marina. Existing facilities include a concrete boat launch ramp, rip-rap, access channel, and landscaping. Existing facilities that would be re-built in place at their current dimensions include a floating fuel dock and two floating courtesy docks. Proposed new facilities include a fixed pier with LED lighting, access stairs and sidewalk to the pier, boardwalk with LED lighting, access stairs and sidewalk to the boardwalk, gravel path, overnight campground space for River Trail paddlers, and five picnic tables. No dredging or fill is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2146) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filings and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30598 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–35–000]

Southwest Gas Corporation; Notice of Application

November 29, 2010.

On November 16, 2010, Southwest Gas Corporation (Southwest) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 7(f) of the Natural Gas Act (NGA), as amended, and section 157 of the Commission's Regulations, for a service area determination for their Kings Beach, California and Crystal Bay, Nevada service areas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Questions regarding this application should be directed to Mark R. Haskell, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004 or by calling 202–739–3000 or by e-mailing *mhaskell@morganlewis.com.*

Pursuant to section 157.9 of the Commission's rules, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on December 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30597 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7518–012]

Erie Boulevard Hydropower L.P.; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

November 29, 2010.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 7518–012.

c. *Date Filed:* September 29, 2010.

d. *Submitted By:* Erie Boulevard Hydropower L.P.

e. *Name of Project:* Hogansburg Hydroelectric Project.

f. *Location:* On the St. Regis River in Franklin County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Steven Murphy, Brookfield Renewable Power, 33 West 1st Street South, Fulton, New York (315) 598–6130 or e-mail at *steven.murphy@brookfieldpower.com.*

i. *FERC Contact:* John Mudre at (202) 502–8675 or e-mail at *john.mudre@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental

document cannot also intervene. *See* 94 FERC 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Erie Boulevard Hydropower L.P. as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Erie Boulevard Hydropower L.P. filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include on the first page, Hogansburg Hydroelectric Project No. 7518–012, and bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by January 28, 2011.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

On November 15, 2010, the Commission issued notice of two scoping meetings to be held in the vicinity of the project at the times and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document.

Daytime Scoping Meeting

Date: Tuesday, December 14, 2010.
Time: 1 p.m.
Location: Wolfclan 37 Hotel,
1450 State Route 37, Hogansburg, NY 13655.
Phone: (518) 358–9038.

Evening Scoping Meeting

Date: Tuesday, December 14, 2010.
Time: 7 p.m.
Location: Wolfclan 37 Hotel, 1450 State Route 37, Hogansburg, NY 13655.
Phone: (518) 358–9038.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Tuesday, December 14, 2010, starting at 3 p.m. All participants should meet at the Wolfclan 37 Hotel, 450 State Route 37, Hogansburg, New York. Participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Steven Murphy of Brookfield Power at (315) 598–6130 on or before December 10, 2010.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this noticet.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30596 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–432–000]

Tricor Ten Section Hub LLC; Notice of Availability of the Environmental Assessment for the Proposed Ten Section Gas Storage Project

November 29, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Ten Section Gas Storage Project, in Kern County, California, proposed by Tricor Ten Section Hub LLC (Tricor) in the above referenced docket. Tricor requests authorization to utilize the depleted underground capacity available within Zone 1 of the Upper Stevens Sands of the existing Ten Section oil and gas field, about 12 miles southwest of Bakersfield, to store about 22.4 billion cubic feet of natural gas.

The EA assesses the potential environmental effects of the construction and operation of the Ten Section Gas Storage Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The California Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. DOGGR has the authority to review Notices of Intent to drill or rework wells and injection project applications, under California state laws and regulations. DOGGR may adopt the EA for purposes of its environmental review of the Project.

The Ten Section Storage Project would consist of the following facilities that would fall under the authority or jurisdiction of the FERC:

- 26 new gas injection/withdrawal wells drilled from 5 well pads at the field;
- 2 new (low pressure and high pressure) 20-inch-diameter field pipelines connecting the gas injection/withdrawal wells to the compressor station;
- 5 existing water disposal wells at the field used for the same purpose;
- new 4-inch-diameter water disposal pipeline from the proposed Tricor compressor station to the existing water disposal wells;
- 2 existing water supply wells and new associated pipelines to provide water for field operations and hydrostatic testing;
- 9 existing oil production wells in the field converted into observation wells;
- new 42,000-horsepower (hp) electric-driven field compressor station;
- new 36-inch-diameter bi-directional header pipeline, extending about 20.5 miles, between Tricor's compressor station and the existing Kern-Mojave pipeline; and
- new metering and regulating station at the interconnection between the Tricor header pipeline with the Kern-Mojave pipeline.

In addition, as part of this Project, the following facilities would be constructed and operated which are not regulated by the FERC (non-jurisdictional facilities):

- New electric substation, to be designed, built, owned, and operated by Pacific Gas and Electric company (PG&E) about 1.5 miles southwest of the storage field;
- new 1.6-miles-long, 230-kilovolt transmission line, to be designed, built, owned, and operated by PG&E, connecting the new electric substation with Tricor's compressor station;
- new 30,000 barrel oil tank within the proposed compressor station tract, and
- new 10-inch-diameter, 0.3-mile-long oil pipeline between the proposed Tricor compressor station and the existing facilities of Kern Oil.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local government representatives and agencies; elected officials; interested Native American tribes; potentially affected landowners; local libraries; other interested individuals; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before December 31, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP09–432–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR

385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–432). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30594 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2179–000]

Planet Energy (New York) Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 26, 2010.

This is a supplemental notice in the above-referenced proceeding, of Planet Energy (New York) Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 16, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–30592 Filed 12–6–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9235–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2374.02; Corporate ID Reporting Rule; 40 CFR part 98; was approved on 11/01/2010; OMB Number 2060–0646; expires on 11/30/2013; Approved without change.

EPA ICR Number 1135.10; NSPS for Magnetic Tape Coating Facilities; 40 CFR part 60, subparts A and SSS; was approved on 11/09/2010; OMB Number 2060–0171; expires on 11/30/2013; Approved without change.

EPA ICR Number 1975.08; NESHAP for Stationary Reciprocating Internal Combustion Engines; 40 CFR part 63, subparts A and ZZZZ; was approved on 11/12/2010; OMB Number 2060–0548; expires on 11/30/2013; Approved without change.

Comment Filed

EPA ICR Number 2392.01; Fuel Economy Labeling of Motor Vehicles (Proposed Rule); in 40 CFR parts 85, 86 and 600; OMB filed comment on 11/12/2010.

EPA ICR Number 1684.15; Emissions Certification, Compliance and In-use Testing Requirements for On-highway Heavy Duty Engines and Vehicles Equipped with On-Board Diagnostics (PR for Alt Fuel Conversion of Heavy-duty Engines); in 40 CFR part 1042, subparts C, D, G and H; OMB filed comment on 11/12/2010.

EPA ICR Number 1884.05; Addendum to Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports; in 40 CFR parts 710 and 711; OMB filed comment on 11/12/2010.

Dated: December 1, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–30629 Filed 12–6–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0544; FRL–9236–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS and NESHAP for Pulp and Paper Sector Residual Risk and Technology Review (RTR); EPA ICR No. 2393.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 6, 2011.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2007–0544, to (1) EPA on-line using www.regulations.gov (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 22821T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Office of Management and Budget (OMB) by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bill Schrock, Office of Air Quality Planning and Standards, Mail Code E143–03, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5032; fax number: (919) 541–3470; e-mail address: *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 23, 2010 (75 *FR* 35792), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received three comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OAR–2007–0544, which is available for on-line viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS and NESHAP for Pulp and Paper Sector Residual Risk and Technology Review (RTR).

ICR numbers: EPA ICR Number 2393.01, OMB Control Number 2060–New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is being conducted by EPA's Office of Air and Radiation to assist the EPA Administrator, as required by sections 111(b), 112(d), and 112(f)(6) of the Clean Air Act (CAA) to determine the current affected population of pulp and paper processes and to re-evaluate emission standards for this source category. The three Federal emission standards that are the subject of this information collection include: (1) Standards of Performance for Kraft Pulp Mills (40 CFR part 60, subpart BB), (2) National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (40 CFR part 63, subpart S), and (3) National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM).

The pulp and paper production source category includes any facility engaged in the production of pulp and/or paper. This category includes, but is not limited to, integrated mills (where pulp alone or pulp and paper or paperboard are manufactured on-site), non-integrated mills (where paper/paperboard or pulp are manufactured, but not both), and secondary fiber mills (where waste paper is used as the primary raw material). The pulp and paper production process units include operations such as pulping, bleaching, chemical recovery, and papermaking. Different pulping processes are used, including chemical processes (kraft, soda, sulfite, and semi-chemical) and mechanical, secondary fiber, or non-wood processes.

This one-time collection will solicit information under the authority of CAA section 114. The data collected will be used to update facility information and equipment configuration, develop new estimates of the population of affected units, and identify the control measures and alternative emission limits being used for compliance with the existing rules that are under review. This information, along with other information, will be used to establish a baseline for purposes of the regulatory reviews. The emissions test data (test reports and continuous emissions monitoring systems (CEMS) data) collected will be used to verify the performance of existing control measures, examine variability in emissions, evaluate emission limits, and to determine the performance of superior control measures considered

for purposes of reducing residual risk or as options for best demonstrated technology under the NSPS review. Emissions data will also be used along with process and emission unit details to consider subcategories for further regulation and to estimate the environmental and cost impacts associated with any regulatory options considered.

Respondents/Affected Entities: Respondents affected by this action are owners/operators of mills that are major sources of hazardous air pollutant (HAP) emissions and produce pulp, perform bleaching, or manufacture paper or paperboard products, including: mills that carry out chemical wood pulping (kraft, sulfite, soda, or semi-chemical), mills that carry out mechanical, groundwood, secondary fiber, and non-wood pulping, mills that perform bleaching, and mills that manufacture paper or paperboard products.

Mills that only purchase pre-consumer paper or paperboard products and convert them into other products (*i.e.,* converting operations) are not affected by this action.

Estimated Number of Respondents: 386 facilities.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 183,746.

Estimated Total Annual Cost: $17,386,690. This includes an estimated burden cost of $17,379,742 and an estimated cost of $6,948 for capital investment or maintenance and operational costs.

Dated: December 1, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–30626 Filed 12–6–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

ACTION: Regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 9, 2010, from 12:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 8, 2010.

B. Business Reports

- September 30, 2010 Financial Reports.
- Report on Insured and Other Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Board Meeting Schedule 2011.
- FCSIC Policy Statement Concerning Equal Employment Opportunity and Diversity.

Closed Session

- Confidential Report on System Performance.
- Audit Plan for the Year Ended December 31, 2010.

Dated: December 2, 2010.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2010–30645 Filed 12–6–10; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Boards is to view and make recommendations concerning proposed performance appraisals, ratings, and bonuses, and other appropriate personnel actions for members of the Senior Executive Service.

DATES: This notice is effective December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Torres, Administrative Officer, at 202–942–1683.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Boards which will oversee the evaluation of the performance appraisals of the Senior Executive Service members of the Federal Retirement Thrift Investment Board: Mark A. Hagerty, Pamela-Jeanne Moran, James B. Petrick, Tracey A. Ray, Thomas J. Trabucco, and Renée Wilder.

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–30633 Filed 12–6–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Emergency Information Collection Clearance Request for Public Comment

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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 functions; (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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request,

including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 30 days.

Proposed Project: Evaluation of SAMHSA Primary Care Behavioral Health Integration Grant Program. Emergency Information Collection Clearance Request—OMB No. 0990–NEW-Assistant Secretary for Planning and Evaluation .

Abstract: The Assistant Secretary for Planning and Evaluation (ASPE) and the Substance Abuse and Mental Health Administration are funding an independent evaluation of the Substance Abuse and Mental Health Administration/Center for Mental Health Services' (SAMHSA/CMHS) Primary Care Behavioral Health Integration (PBHCI) grant program. Four-year PBHCI grants were awarded to thirteen grantees on October 1, 2009. A second group of nine grants and a third group of up to 38 additional grants will be awarded prior to October 1, 2010. The purpose of the PBHCI grants is to improve the overall wellness and physical health status of people with serious mental illnesses (SMI), including individuals with co-occurring substance use disorders, by supporting communities to coordinate and integrate primary care services into publicly funded community mental health and other community-based behavioral health settings. The information collected through the evaluation will assist SAMHSA in assessing whether integrated primary care services produce improvements in the physical and mental health of the SMI population receiving services from community-based behavioral health agencies.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Client exam/survey (control group, 1st cohort)	900	1	45/60	675
Client service report	63	4	8.00	2,016
Quarterly reports	60	4	2.00	480
New TRAC indicators	60	200	0.08	960
Leadership	9	1	2.00	18
PH Providers	9	1	1.50	14
MH Providers	9	1	1.00	9
Care Coordinators	6	1	1.50	9
Site visit interview (1st cohort, control sites)	15	1	2.00	30
Total	1,131			4,211

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–30516 Filed 12–6–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–11–0263]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Carol Walker, Acting CDC Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov.*

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (OMB Control No. 0920–0263 exp. 6/30/2011)—Extension—National Center for Emerging and Zoonotic Infectious Diseases, (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to continue its data collection, "Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States", for another three years. This data collection is currently approved under OMB Control No. 0920–0263. There are no revisions proposed to the currently approved information collection request.

A registered importer must request a special permit to import Cynomolgus, African Green, or Rhesus monkeys. To receive a special permit to import nonhuman primates, the importer must submit a written plan to the Director of CDC which specifies steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such

monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and to determine whether the measures being taken are adequate to prevent exposure of persons and animals during importation. CDC will monitor at least 2 shipments to be assured that the provisions of a special permit plan are being followed by a new permit holder. CDC will assure that adequate disease control practices are being used by new permit holders before the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This extension eliminates the burden on importers to repeatedly report identical information, requiring submission only of specific shipment itineraries and information on changes to the plan which require approval.

Respondents are businesses or not-for-profit organizations that import nonhuman primates. The burden represents full disclosure of information and itinerary/change information, respectively. There are no costs to respondents except for their time to complete the requisition process.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Instrument	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden
Request for Special Permit	Businesses (limited permit)	5	2	30/60	5
Request for Special Permit	Businesses (extended permit)	1	3	10/60	0.5
Request for Special Permit	Organizations (limited permit)	3	2	30/60	3
Request for Special Permit	Organizations (extended permit)	12	2	10/60	4
Total					12.5

Dated: November 30, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–30618 Filed 12–6–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0606]

Agency Information Collection Activities; Proposed Collection; Comment Request; Additional Listing Information for Medical Device Registration and Listing

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 reporting and recordkeeping burden requirements associated with additional listing information for medical device registration and listing by non-electronic means.

DATES: Submit either electronic or written comments on the collection of information by February 7, 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: Daniel Gittleson, Office of Information Management Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Additional Listing Information for Medical Device Registration and Listing (OMB Control Number 0910–0387)—Extension

The Food and Drug Administration Amendments Act of 2007 (FDAAA), enacted September 27, 2007, requires that device establishment registrations and listings under 21 U.S.C. 360(p) (including the submission of updated information) be submitted to the Secretary of Health and Human Services (the Secretary) by electronic means,

unless the Secretary grants a request for waiver of the requirement, because the use of electronic means is not reasonable for the person requesting the waiver. The collections of information under sections 222, 223, and 224 of FDAAA have been approved under OMB control number 0910–0625. Registration by electronic means for device establishments replaced FDA Forms 2891 and 2891a, "Registration of Device Establishment," and FDA Form 2892, "Medical Device Listing," with FDA Form 3673, "Device Registration and Listing Module." The scope of this information collection addresses only the reporting and recordkeeping requirements by non-electronic means under § 807.31 (21 CFR 807.31).

Under § 807.31(a) through (d), each owner or operator is required to maintain an historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but not before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Section 807.31(e) requires that the owner or operator be prepared to submit to FDA copies of: (1) All device labeling, (2) all device labeling and representative advertising, or (3) only representative package inserts, depending upon whether the device is subject to the regulatory controls under sections 514 and 515 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d and 360e), or restrictions imposed by 21 CFR 801.109 or otherwise by section 520(e) of the FD&C Act.

The information collected under these provisions is used by FDA to identify: (1) Firms subject to FDA's regulations, (2) geographic distribution of firms in order to effectively allocate FDA's field resources for inspections, and (3) the class of the device that determines the frequency of inspection. As a result, when complications occur with a particular device or component, all manufacturers of similar or related devices can easily be identified.

The likely respondents to this information collection are domestic and foreign device establishments who must register and submit a device list to FDA, *e.g.,* establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Annual frequency of response	Total annual responses	Hours per response	Total hours
807.31(d)(2)	2,250	1	2,250	.5	1,125
807.31(e)	22,500	1	22,500	.5	11,250
Total					12,375

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
807.31(a–c)	22,500	4	90,000	0.50	45,000
Total					45,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual respondent reporting burden for device establishment registrations and listings for additional information is estimated to be 12,375 hours and the annual respondent recordkeeping burden is estimated to be 45,000 hours. Therefore, the total burden hours for this collection are estimated to be 57,375. The estimates cited in tables 1 and 2 of this document are based primarily on fiscal year 2010 data from current systems and on conversations with industry and trade association representatives.

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30582 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0088]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Electronic Products—General Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Electronic Products—General Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@FDA.HHS.GOV.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 13, 2010 (75 FR 26964), 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 0910–0025. 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: *December 1, 2010.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30555 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0316]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Pilot Program for Medical Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 6, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0471. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Event Pilot Program for Medical Products—(OMB Control Number 0910–0471)—Extension

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i), FDA is authorized to require: Manufacturers to report medical device-related deaths, serious injuries, and malfunctions; and user facilities to report device-related deaths directly to manufacturers and FDA, and to report serious injuries to the manufacturer. Section 213 of the FDA Modernization Act of 1997 (FDAMA) amended section 519(b) of the FD&C Act relating to mandatory reporting by user facilities of deaths and serious injuries and serious illnesses associated with the use of medical devices. This amendment legislated the replacement of universal user facility reporting by a system that is limited to a "* * * subset of user facilities that constitutes a representative profile of user reports" for device-related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the FD&C Act. The current universal reporting system remains in place during the pilot stages of the new program and until FDA implements the new national system by regulation. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high-quality data on medical devices in clinical use. This system is called the Medical Product Safety Network (MedSun).

FDA is continuing to conduct a pilot of the MedSun system before the Agency issues regulation to change from universal mandatory reporting for medical device user facilities to reporting by a representative sample of facilities. This data collection has been ongoing since February 20, 2002, and this notice is for continuation of this data collection.

FDA is seeking OMB clearance to continue to use electronic data collection to obtain the information on the 3500A Form related to medical devices and tissue products from the user facilities participating in MedSun, to obtain a demographic profile of the facilities, and to pilot additional questions, which will permit FDA to better understand the cause of reported adverse events. During the pilot program, participants will be asked to complete an annual outcome measures form, as a Customer/Partner Service Survey (approved under OMB control number 0910–0360) to aid FDA in evaluating the effectiveness of the program. Participation in this pilot is voluntary and currently includes 400 facilities. The use of an interactive electronic data collection system is easier and more efficient for the participating user facilities to use than the alternative paper system.

In addition to collecting data on the electronic adverse event report form, MedSun is proposing to collect additional information from participating sites about reported problems emerging from the MedSun hospitals. This data collection is also voluntary and will be collected on the same Web site as the report information. This will replace the Device-Safety Exchange (DS–X). The burden to respond to these questions will take the same time as that used for DS–X: 30 minutes.

The total burden hours for MedSun and emerging signal questions equals 6,000 hours (4,500 for MedSun and 1,500 for emerging signals). The burden estimate for the electronic reporting of adverse events is based on the number of facilities currently participating in MedSun (400). FDA estimates an average of 15 reports per site annually. This estimate is based on MedSun working to promote reporting in general from the sites, as well as promoting reporting from specific parts of the hospitals, such as the pediatric intensive care units, electrophysiology laboratories, and the hospital laboratories. The burden estimate for the emerging signal portion of MedSun is based on the assumption that not all sites will use this part of the software each time questions are asked because not all sites will use the device in question.

In the **Federal Register** of July 9, 2010 (75 FR 39535), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Item	Nunber of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
MedSun facilities participating in the electronic reporting of adverse events program	400	15	6,000	0.75	4,500
MedSun facilities' electronic responses to Public Health Questions (PHQs)	400	10	4,000	0.5	2,000
Total hours					6,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30583 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0083]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 2010 (75 FR 34744), 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 0910–0339. The approval expires on November 30, 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: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30556 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0056] (formerly 2004N–0234)

Annual Guidance Agenda

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its annual guidance document agenda. This list is being published under FDA's good guidance practices (GGPs) regulations. It is intended to seek public comment on possible topics for future guidance document development or revisions of existing ones.

DATES: Submit either electronic or written comments on this list and on any agency guidance document at any time.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: For general information regarding FDA's GGP policy contact: Lisa Helmanis, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., WO32, rm. 3216, Silver Spring, MD 20993–0002, 301–796–9135.

For information regarding specific topics or guidances, please see contact persons or specific offices listed in the table in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 19, 2000 (65 FR 56468), FDA issued its final rule on GGPs (21 CFR 10.115). GGPs are intended to ensure involvement of the public in the development of guidance documents and to enhance understanding of the availability, nature, and legal effect of such guidance documents.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the Agency committed to publishing an annual guidance document agenda of possible guidance topics or documents for development or revision during the coming year. The Agency also committed to soliciting public input regarding these and additional ideas for new topics or revisions to existing guidance documents (65 FR 56468 at 56477; 21 CFR 10.115(f)(5)).

The Agency is neither bound by this list of possible topics nor required to issue every guidance document on this list or precluded from issuing guidance documents not on the list set forth in this document.

The following list of guidance topics or documents represents possible new topics or revisions to existing guidance documents that the Agency is considering. The Agency solicits comments on the topics listed in this document and also seeks additional ideas from the public.

The guidance documents are organized by the issuing Center or Office within FDA, and in some cases are further grouped within the issuing Center or Office by topic categories.

II. Center for Biologics Evaluation and Research (CBER)

Title/topic of guidance	Contact
CATEGORY—BLOOD AND BLOOD COMPONENTS: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture Implementation of an Acceptable Abbreviated Donor History Questionnaire and Accompanying Materials for Use in Screening Frequent Donors of Blood and Blood Components Implementation of Acceptable Full-Length and Abbreviated Donor History Questionnaire and Accompanying Materials for Use in Screening Source Plasma Donors Use of Nucleic Acid Tests on Pooled and Individual Samples From Donors of Whole Blood and Blood Components (Including Recovered Plasma, Source Plasma and Source Leukocytes) to Adequately and Appropriately Reduce the Risk of Transmission of Hepatitis B Virus.	Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1800.
CATEGORY—CELLULAR, TISSUE, AND GENE THERAPY: Preclinical Safety Assessment of Investigational Cellular, Gene Therapy, and Certain Related Products Characterization and Qualification of Cell Banks Used in the Production of Cellular and Gene Therapy Products Clinical Study Design for Early Phase Studies of Cellular and Gene Therapies.	Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1800.
CATEGORY—OTHER Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information Bar Code Label Requirements—Question and Answer (Update for Vaccines).	Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1800.

III. Center for Drug Evaluation and Research (CDER)

For information on the list of topics contact: Office of Training and Communications, Division of Drug Information, 10903 New Hampshire Ave., WO51, rm. 2201, Silver Spring, MD 20993, 301–796–3400, FAX: 301–847–8714, e-mail: *druginfo@fda.hhs.gov*.

Category—Advertising

- Amendment of the Brief Summary
- Comparative Claims in Prescription Drug Promotion
- Direct to Consumer (DTC) Television Advertisements—Food and Drug Administration Amendments Act of 2007 (FDAAA) DTC Television Pre-Review Program
- Promotion of Prescription Drug Products Using Social Media Tools

Category—Chemistry

- Chemistry, Manufacturing, and Controls (CMC)—Postmarketing Plan
- CMC Postapproval Changes Reportable in an Annual Report
- Comparability Protocols for Approved Drugs: CMC Information
- Standards Recognition
- Residual Drug in Transdermal Drug Delivery Systems

Category—Clinical/Medical

- Clinical Development of Drugs for Irritable Bowel Syndrome
- Oncology Endpoints: Non-Small Cell Lung Cancer
- Qualification Process for Drug Development Tools
- Responsible Inclusion of Pregnant Women in Clinical Trials

Category—Clinical Pharmacology

- Bioanalytical Methods Validation
- Clinical Pharmacogenomics: Study Design and Premarketing Evaluation
- Clinical Pharmacology Consideration for Therapeutics Proteins
- General Clinical Pharmacology Considerations for Pediatric Studies for Drugs and Biological Products
- Development of Extended Released Formulations

Category—Clinical/Statistical

- Adaptive Trial Designs
- Multiple Endpoints
- Non-Inferiority Trials

Category—Combination Products

- Drug Diagnostic Co-Development
- Development of Drugs in Combination

Category—Current Good Manufacturing Practices (CGMPs)/Compliance

- Contract Manufacturing
- Control of Components
- Control of Highly Potent Compounds
- Expiration Dating of Unit-Dose Repackaged Drugs: Compliance Policy Guide
- Importation of Active Pharmaceutical Ingredients (API) for Use in Human Drugs
- Medical Gas, General CGMP
- Non-Penicillin Beta-Lactam Contamination
- Outsourcer Pharmacy Operations Compliance Policy Guide
- Pharmaceutical Component Quality Control
- Pharmaceutical Manufacturing Statistics
- Pre-Launch Activities Importation Request (PLAIR)
- Prevention and Control of Viral Contamination
- Validation of Air Separation Processes for Medical Gas

Category—Drug Safety Information

- Best Practices for Conducting Pharmacovigilance Studies Using Electronic Healthcare Data
- Dear Healthcare Professional Letters
- Good Naming, Labeling, and Packaging Practices to Reduce Medication Errors

Category—Electronic Submissions

- Electronic Submission of Summary Level Clinical Site Data for Data Integrity Review and Inspection Planning in New Drug Application (NDA) and Biologics License Application (BLA) Submissions
- Providing Regulatory Submissions in Electronic Format—Analysis Datasets and Documentation

Category—Investigational New Drug Application (IND)

- Adverse Events: Collection and Reporting for Secondary Endpoints

- Determining Whether Human Research Studies Can Be Conducted Without an IND
- IND Safety Reporting

Category—Labeling

- Drug Names and Dosage Forms
- Pediatric Information: Incorporating into Human Prescription Drug and Biological Products Labeling

Category—Procedural

- INDs prepared and submitted by Clinical Sponsor Investigators

IV. Center for Devices and Radiological Health (CDRH)

FDA has established a docket for CDRH, Docket No. FDA–2007–N–0270, for comments on any or all of the proposed fiscal year 2010 guidance documents. FDA invites interested persons to submit comments, draft language on the proposed topics, and/or suggestions for new or different guidance documents. FDA believes this docket is an important tool for receiving information from interested parties and for making information available to the public.

Guidance Related to FDAAA or General Premarket Issues

- 30–Day notices and 135-day Premarket Approval Application (PMA)

Supplements

- Actions on 510(k) Submissions
- Annual Reports for PMAs
- Protocol Review Guidance for In Vitro Diagnostics (IVDs)
- Tracking Pediatric Device Approvals
- Premarket Notification Submissions for Medical Devices That Include Antimicrobial Agents

Guidance on Postmarket and Compliance Issues

- Medical Device Reporting for Manufacturers
- Postmarket Surveillance Under Section 522 of the Federal Food, Drug, and

Cosmetic Act

- Electronic Registration and Listing
- Manufacturing Site Change Supplements: Content and Inspectional

Considerations

- Quality Systems for Laboratory Developed Tests

Device Specific Guidances

- Bacillus spp. Serological Reagents
- Clinical Performance Assessment: Considerations for Computer-Assisted Detection Devices Applied to Radiology Images and Radiology Device Data
- Computer-Assisted Detection Devices Applied to Radiology Images and

Radiology Device Data—Premarket Notification (510(k)) Submissions

- Coronary Drug Eluting Stents
- Dental Mouthguards
- Helicobacter Pylori
- Herpes Simplex Virus
- Impact-Resistant Lenses
- Invasive Portable Blood Glucose Monitoring Systems
- Ovarian Adnexal Mass Surgery Referral Index
- Percutaneous Transluminal Coronary Angioplasty Catheters
- Suction Apparatus Device Intended for Negative Pressure Wound Therapy
- Tissue Adhesive With Adjunct Wound Closure Device
- Topical Oxygen Chamber for Extremities
- Transcranial Magnetic Stimulation Systems
- Yersinia
- Zonisamide and Lamotrigine Assays

Global Harmonization or Standards Related Guidances

- Application of IEC 60601–1 Third Edition in Premarket Applications
- Global Harmonization Task Force: Quality Management System; Process

Validation

- Global Harmonization Task Force: Postmarket Surveillance; National Competent Authority Report Exchange Criteria and Report Form

Crosscutting, Process, and Other Guidances

- Radio-Frequency Wireless Technology in Medical Devices
- Medical Device Appeals and Complaints: Guidance on Dispute Resolution
- Medical Devices Containing Materials From Animal Sources (Except IVDs)

V. Center for Food Safety and Applied Nutrition (CFSAN)

Title/topic of guidance	Contact
New Dietary Ingredient Notifications	Constance Hardy, CFSAN (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375, *Constance.Hardy@fda.hhs.gov*.
Fish and Fishery Products Hazards and Controls Guidance (Edition 4)	Thomas Latt, CFSAN (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1423, *Thomas.Latt@fda.hhs.gov*.
Use of Dietary Guidance Statements	Blakeley Denkinger, CFSAN (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, (301–436–2176), *Blakeley.Denkinger@fda.hhs.gov*.
Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 5).	Rhonda Kane, CFSAN (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1803, *Rhonda.Kane@fda.hhs.gov*.
Processing of Acidified Foods	Michael Mignogna, CFSAN (HFS–302), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 301–436–1515, *Michael.Mignogna@fda.hhs.gov*.
Calorie Declaration	Vincent DeJesus, CFSAN (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1774, *Vincent.Dejesus@fda.hhs.gov*.
Compliance Policy Guide Sec. 527.300 Dairy Products-Microbial Contaminants and Alkaline Phosphatase Activity (Compliance Policy Guide 7106.08).	Monica Metz, CFSAN (HFS–316), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 301–436–2041, *Monica.Metz@fda.hhs.gov*.
Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation.	Nancy Bufano, CFSAN (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740., 301–436–1493, *Nancy.Bufano@fda.hhs.gov*.
Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation.	Nancy Bufano, CFSAN (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1493, *Nancy.Bufano@fda.hhs.gov*.

Title/topic of guidance	Contact
Positive Tests for Salmonella	Michael Kashtock, CFSAN (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022, *Michael.Kashtock@fda.hhs.gov*.
Compliance Policy Guide Sec. 550.050 Canned Ackee, Frozen Ackee, and Ackee Products—Adulteration With Hypoglycin A.	Joyce Saltzman, CFSAN (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2041, *Joyce.Saltzman@fda.hhs.gov*.
Assessing the Effects of Significant Manufacturing Process Changes, Including Emerging Technologies, on the Safety and Regulatory Status of Food Ingredients and Food Contact Substances, Including Food Ingredients That are Color Additives.	Annette McCarthy, CFSAN (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1057, *Annette.McCarthy@fda.hhs.gov*.
Questions and Answers Regarding Voluntary Registration by Authorized Officials of Retail Food Establishments and by Vending Machine Operators Electing to be Subject to the Menu and Vending Machine Labeling Requirements Established by Section 4205 of the Patient Protection and Affordable Care Act.	Felicia Billingslea, CFSAN (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371, *Felicia.Billingslea@fda.hhs.gov*.
Questions and Answers Regarding the Effect of Section 4205 of the Patient Protection and Affordable Care Act on State and Local Menu and Vending Machine Labeling Laws.	Felicia Billingslea, CFSAN (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371, *Felicia.Billingslea@fda.hhs.gov*.
Safety of Nanoscale Materials in Cosmetic Products	Kapal Dewan, CFSAN (HFS–100), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1130, *Kapal.Dewan@fda.hhs.gov*.
The Safety of Imported Traditional Pottery Intended for Use With Food and the Improper Use of the Terms "Lead Free," and the Proper Identification of Ornamental and Decorative Ware.	Michael Kashtock, CFSAN (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022, *Michael.Kashtock@fda.hhs.gov*.

VI. Center for Tobacco Products (CTP)

Title/topic of guidance	Contact
Enforcement Policy Concerning Rotational Warning Plans for Smokeless Tobacco Products.	Office of Regulations, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–796–9250.
Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents.	
Use of "Light," "Mild," "Low," or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products.	
"Harmful and Potentially Harmful Constituents" in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act.	
Tobacco Product Retailer Training Program	
Civil Money Penalties for Tobacco Retailers	

VII. Center for Veterinary Medicine (CVM)

Title of Guidance	Contact
Draft Guidance for Industry—Safe Animal Feeding	Phares Okelo, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., MPN–4, rm. 2661, Rockville, MD 20855, 240–453–6862, *phares.okelo@fda.hhs.gov.*
Draft Compliance Policy Guide—Glucosamine/Chondroitin Animal Products.	Paul Bachman, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., MPN–4, rm. 143, Rockville, MD 20855, 240–276–9225, *paul.bachman@fda.hhs.gov.*
Final Guidance for Industry—Comparability Protocols	Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. E334, Rockville, MD 20855, 240–276–8268, *dennis.bensley@fda.hhs.gov.*
Draft Guidance for Industry—Fermentation Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use—Chemistry, Manufacturing, and Controls Information.	Michael Popek, Center for Veterinary Medicine (HFV–144), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. E335, Rockville, MD 20855, 240–276–8269, *michael.popek@fda.hhs.gov.*
Final Guidance for Industry—Drug Substance Chemistry, Manufacturing, and Controls Information.	Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. E334, Rockville, MD 20855, 240–276–8268, *dennis.bensley@fda.hhs.gov.*
Draft Guidance for Industry—Active Controls in Studies to Demonstrate Effectiveness of a New Animal Drug for Use in Companion Animals.	Urvi Desai, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7520 Standish Pl., MPN–1, rm. 203, Rockville, MD 20855, 240–276–8297, *urvi.desai@fda.hhs.gov.*
Draft Guidance for Industry—Judicious Use of Antimicrobial Drugs in Food-Producing Animals.	William Flynn, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7519 Standish Pl. MPN–4, rm. 173, Rockville, MD 20855, 240–276–9084, *William.flynn@fda.hhs.gov.*

Title of Guidance	Contact
Draft Guidance for Industry—Active Controls in Studies to Demonstrate the Effectiveness of a New Drug for Use in Companion Animals.	Lisa Troutman, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. N319, Rockville, MD 20855, 240–276–8322, *lisa.troutman@fda.hhs.gov.*
Residual Solvents in Animal Drug Products; Questions and Answers	Sudesh Kamath, Center for Veterinary Medicine (HFV–145), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. E365, Rockville, MD 20855, 240–276–8260, *sudesh.kamath@fda.hhs.gov.*
Draft Guidance for Industry—Updating Labeling of Certain Antimicrobial New Animal Drug Products for Use in the Feed or Water of Food-Producing Animals.	William Flynn, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7519 Standish Pl., MPN–4, rm. 173, Rockville, MD 20855, 240–276–9084, *William.flynn@fda.hhs.gov.*
Final Guidance for Industry—Bracketing and Matrixing Designs for Stability Testing of New Veterinary Drug Substances and Medicinal Products, VICH GL–45.	Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., MPN–2, rm. E334, Rockville, MD 20855, 240–276–8268, *dennis.bensley@fda.hhs.gov.*
Revised Draft Guidance for Industry—Impurities: Residual Solvents In New Veterinary Medicinal Products, Active Substances and Excipients, VICH GL18(R).	Mai, Huynh, Center for Veterinary Medicine, (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8273, *Mai.huynh@fda.hhs.gov.*
Draft Guidance for Industry—Evaluating the Effectiveness of Anticoccidial Drugs in Food-Producing Animals.	Emily R. Smith, (HFV–135), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8344, e-mail: *emily.smith2@fda.hhs.gov.*
Draft Guidance for Industry—Protocol Submissions for the Division of Therapeutic Drugs for Non-Food Animals the Division of Production Drugs, and the Division of Therapeutic Drugs for Food Animals.	Angela Clarke, Center for Veterinary Medicine (HFV–105), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8318; e-mail: *angela.clarke@fda.hhs.gov.*

VIII. Office of the Commissioner

Guidance title/TOPIC	OC Contact
• Classification of products as biological products, devices, and drugs	John Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave, Silver Spring, MD 20993 301–796–8941.
• Interpretation of the term "chemical action' in definition of device under section 201(h) of the Federal Food, Drug, and Cosmetic Act.	Do.
• Types of submissions for postapproval changes to combination products	Do.
• Information Sheet Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors—FDA Inspections of Clinical Investigators Describes FDA's inspectional process when the agency inspects the site of an investigator who is conducting a clinical study regulated by FDA.	Bridget Foltz, Office of Good Clinical Practices, Food and Drug Administration, 10903 New Hampshire Avenue, Silver Spring, MD 20993, 301–796–8348.
• Draft Information Sheet Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors—A Guide to Informed Consent Describes in detail basic and additional elements of informed consent and includes topics such as review of patient records, children as subjects, and subject participation in more than one study.	Sara Goldkind (301–796–8342), Marsha Melvin (301–796–8345), Office of Good Clinical Practices, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993.
• Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors—Exception From Informed Consent Requirements for Emergency Research This final guidance is intended to assist sponsors, clinical investigators, and IRBs in the development, conduct, and oversight of research involving FDA-regulated products (e.g., drugs, biological products, devices) in emergency settings when an exception from the informed consent requirements is requested under 21 CFR 50.24. In particular, the guidance clarifies FDA's expectations related to planning and conducting community consultation and public disclosure activities, and the establishment of informed consent procedures to be used when feasible.	Sara Goldkind, Office of Good Clinical Practices, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8348.

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30623 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0551]

Compliance Policy Guide Sec. 393.200 Laser(s) as Medical Devices for Facelift, Wrinkle Removal, Acupuncture, Auricular Stimulation, Etc.; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of Compliance Policy Guide Sec. 393.200 Laser(s) as Medical Devices for Facelift, Wrinkle Removal, Acupuncture, Auricular Stimulation, etc. (CPG Sec. 393.200). CPG Sec. 393.200 is included in FDA's Compliance Policy Guides Manual, which was listed in the Annual Comprehensive List of Guidance Documents that published on August 9, 2010.

DATES: The withdrawal is effective December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Sean M. Boyd, Center for Devices and Radiological Health, Office of Communication, Education, and Radiological Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4640, Silver Spring, MD 20993–0002, 301–796–5895.

SUPPLEMENTARY INFORMATION: In a notice containing a cumulative list of guidances available from the Agency that published in the **Federal Register** of August 9, 2010 (75 FR 48180 at 48233), FDA included the Compliance Policy Guides Manual, which includes CPG Sec. 393.200. FDA is withdrawing CPG Sec. 393.200 because it is obsolete.

Dated: November 23, 2010.

Dara Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2010–30679 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–P–0172 and FDA–2010–P–0177]

Determination That AUGMENTIN '125' (Amoxicillin; Clavulanate Potassium) Chewable Tablet and Six Other AUGMENTIN (Amoxicillin; Clavulanate Potassium) Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the AUGMENTIN (amoxicillin; clavulanate potassium) drug products listed in this notice were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Molly Flannery, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6237, Silver Spring, MD 20993–0002, 301–796–3543.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug. Under § 314.161(a)(2), FDA must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

The drug products listed in table 1 of this document are no longer being marketed. Six of the products listed (AUGMENTIN '125' Chewable Tablet, AUGMENTIN '250' Chewable Tablet, AUGMENTIN '200' Powder for Suspension, AUGMENTIN '400' Powder for Suspension, AUGMENTIN '200' Chewable Tablet, and AUGMENTIN '400' Chewable Tablet) are indicated for the treatment of infections caused by susceptible strains of the designated organisms in the following conditions: Lower respiratory tract infections, caused by β-lactamase-producing strains of *Haemophilus influenzae* and *Moraxella catarrhalis;* otitis media, caused by β-lactamase-producing strains of *H. influenzae* and *M. catarrhalis;* sinusitis, caused by β-lactamase-producing strains of *H. influenzae* and *M. catarrhalis;* skin and skin structure infections, caused by β-lactamase-producing strains of *Staphylococcus aureus, Escherichia coli,* and *Klebsiella* spp.; and urinary tract infections, caused by β-lactamase-producing strains of *E. coli, Klebsiella* spp., and *Enterobacter* spp. AUGMENTIN ES–600 Powder for Suspension is indicated for the treatment of pediatric patients with recurrent or persistent acute otitis media due to *Streptococcus pneumoniae* (penicillin MICs ≤ 2 micrograms (mcg)/mL), *H. influenzae* (including β-lactamase-producing strains), or *M. catarrhalis* (including β-lactamase-producing strains) characterized by the following risk factors: antibiotic exposure for acute otitis media within the preceding 3 months, and either age ≤ 2 years or daycare attendance.

TABLE 1

Application No.	Drug	Applicant	Initial approval date
NDA 50–597	AUGMENTIN '125' (amoxicillin; clavulanate potassium) Chewable Tablet, 125 milligrams (mg); Equivalent to (EQ) 31.25 mg base.	GlaxoSmithKline, One Franklin Plaza, Philadelphia, PA 19101.	July 22, 1985.
Do	AUGMENTIN '250' (amoxicillin; clavulanate potassium) Chewable Tablet, 250 mg; EQ 62.5 mg base.	Do	Do.

TABLE 1—Continued

Application No.	Drug	Applicant	Initial approval date
NDA 50–725	AUGMENTIN '200' (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 200 mg/5 milliliters (mL); EQ 28.5 mg base/5 mL.	Do	May 31, 1996.
Do	AUGMENTIN '400' (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 400 mg/5 mL; EQ 57 mg base/5 mL.	Do	Do.
NDA 50–726	AUGMENTIN '200' (amoxicillin; clavulanate potassium) Chewable Tablet, 200 mg; EQ 28.5 mg base.	Do	Do.
Do	AUGMENTIN '400' (amoxicillin; clavulanate potassium) Chewable Tablet, 400 mg; EQ 57 mg base.	Do	Do.
NDA 50–755	AUGMENTIN ES–600 (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 600 mg/5 mL; EQ 42.9 mg base/5 mL.	SmithKline Beecham d/b/a GlaxoSmithKline, One Franklin Plaza, Philadelphia, PA 19101.	June 22, 2001.

In a letter dated November 10, 2009, GlaxoSmithKline notified FDA that the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document, among other drug products, were being discontinued, and FDA moved the drug products to the "Discontinued Drug Product List" section of the Orange Book. Approved ANDAs for the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document are listed in the Orange Book, and following the discontinuation of the AUGMENTIN (amoxicillin; clavulanate potassium) products, ANDAs for certain of these products were designated as the reference listed drugs to which new ANDAs should refer.

EAS Consulting Group, LLC, submitted two citizen petitions dated March 23, 2010 (FDA–2010–P–0172), and March 26, 2010 (FDA–2010–P–0177), under 21 CFR 10.30, requesting that the Agency determine whether the following products were withdrawn from sale for reasons of safety or effectiveness:

- AUGMENTIN '200' (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 200 mg/5 mL; EQ 28.5 mg base/5 mL;
- AUGMENTIN '400' (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 400 mg/5 mL; EQ 57 mg base/5 mL; and
- AUGMENTIN ES–600 (amoxicillin; clavulanate potassium) Powder for Oral Suspension, 600 mg/5 mL; EQ 42.9 mg base/5 mL.

Although the citizen petitions did not address the other AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document, those products have also been discontinued. On our own initiative, we have also determined whether those products were withdrawn for safety or effectiveness reasons.

After considering the citizen petitions and reviewing Agency records, FDA has determined under § 314.161 that the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to the AUGMENTIN (amoxicillin; clavulanate potassium) products listed in this document. Additional ANDAs that refer to these products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30622 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0275]

Determination That GLEEVEC (Imatinib Mesylate) Capsules, 50 Milligrams and 100 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that GLEEVEC (imatinib mesylate) Capsules, 50 milligrams (mg) and 100 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for imatinib mesylate capsules, 50 mg and 100 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Rochelle Chodock Fink, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6236, Silver Spring, MD 20993–0002, 301–796–0838.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term

Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, are the subject of NDA 21–335, held by Novartis Pharmaceutical Corp., and initially approved on May 10, 2001. GLEEVEC is a protein-tyrosine kinase inhibitor used in the treatment of a variety of malignancies, including Ph+ chronic myeloid leukemia and acute lymphoblastic leukemia, myelodysplastic/myeloproliferative diseases, aggressive systemic mastocytosis, hypereosinophilic syndrome, chronic eosinophilic leukemia, dermatofibrosarcoma protuberans, and gastrointestinal stromal tumors. FDA has moved GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, to the "Discontinued Drug Product List" section of the Orange Book.

Hyman, Phelps & McNamara, PC, submitted a citizen petition dated June 3, 2010 (Docket No. FDA–2010–P–0275), under 21 CFR 10.30, requesting that the Agency determine whether GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of GLEEVEC (imatinib mesylate) capsules, 50 mg and 100 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to GLEEVEC (imatinib mesylate) Capsules, 50 mg and 100 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30570 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Third Annual Sentinel Initiative Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing the following public workshop: Third Annual Sentinel Initiative Public Workshop. Hosted by the Engelberg Center for Health Care Reform at The Brookings Institution, this 1-day public workshop will bring together the stakeholder community for a productive discussion on a variety of topics in active medical product surveillance, including an update on Mini-Sentinel and related activities, near-term plans for FDA's Sentinel Initiative, and opportunities for coordination with other U.S. Department of Health and Human Services efforts that use distributed systems of automated health care data.

Date and Time: The public workshop will be held on January 12, 2011, from 8:30 a.m. to 4:30 p.m.

Location: The public workshop will be held at the Renaissance Dupont Hotel, 1143 New Hampshire Ave. NW., Washington, DC 20037.

Contact: Kayla Garvin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6331, Silver Spring, MD 20993, 301–796–7578, e-mail: *sentinelinitiative@fda.hhs.gov.*

Registration: To attend the public workshop, please register at *http://guest.cvent.com/d/hdq5r4/1Q.* When registering, provide the following information: Your name, title, company or organization (if applicable), address, phone number, and e-mail address. There is no fee to register for the public workshop, but because seating is limited, registration will be on a first-come, first-served basis. A 1-hour lunch break is scheduled; however, food will not be provided. There are multiple restaurants within walking distance of the hotel where attendees can get food. If you need special accommodations due to a disability, please contact The Brookings Institution event coordinator at 202–797–4391 or e-mail: *sentinelevent@brookings.edu* at least 7 days in advance.

Meeting Materials: Please be advised that as soon as workshop materials are available, they will be accessible at The Brookings Institution events Web site at *http://www.brookings.edu//health/events.*

Dated: December 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–30562 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0550]

Compliance Policy Guide Sec. 390.500 Definition of "High-Voltage Vacuum Switch"—21 CFR 1002.61(a)(3) and (b)(2); Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of Compliance Policy Guide Sec. 390.500 Definition of "High-Voltage Vacuum Switch"—21 CFR 1002.61(a)(3) and (b)(2) (CPG Sec. 390.500). CPG Sec. 390.500 is included in FDA's Compliance Policy Guides Manual, which was listed in the Annual Comprehensive List of Guidance Documents that published on August 9, 2010.

DATES: The withdrawal is effective December 7, 2010.

FOR FURTHER INFORMATION CONTACT: Sean M. Boyd, Center for Devices and Radiological Health, Office of Communication, Education, and Radiological Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4640, Silver Spring, MD 20993–0002, 301–796–5895.

SUPPLEMENTARY INFORMATION: In a notice containing a cumulative list of guidances available from the agency that published in the **Federal Register** of August 9, 2010 (75 FR 48180 at 48233), FDA included the Compliance Policy Guides Manual, which includes CPG Sec. 390.500. FDA is withdrawing CPG Sec. 390.500 because it is obsolete.

Dated: November 22, 2010.

Dara Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2010–30677 Filed 12–6–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, 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.

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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB January 2011.

Date: January 24, 2011.

Open: 8:30 a.m. to 1 p.m.

Agenda: Report from the Institute Director, other Institute Staff and discussion of strategic plan.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room (2nd Level), Bethesda, MD 20817.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room (2nd Level), Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30644 Filed 12–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of 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 National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, 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.

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 USC, as amended. The grant applications and/or contract Proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: February 4, 2011.

Closed: February 4, 2011, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: February 4, 2011, 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. (301) 594–2014.

The public comments session is scheduled from 3:30 to 4 p.m. on February 4, 2011, but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of

organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 26, 2011. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (February 14, 2011) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *nccam.nih.gov/about/naccam,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: November 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–30641 Filed 12–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Devices for Treating Dysphagia and Dysphonia

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: HHS Ref. No. E–251–2005/0,/1,/2:

Patent/application number	Territory	Filing date	Status
60/695,424	US	July 1, 2005	Expired.
60/787,215	US	March 30, 2006	Expired.
PCT/US2006/025535	Intl	June 30, 2006	Expired.
PCT/US2007/007993	Intl	March 20, 2007	Expired.
PCT/US2009/57158	Intl	September 16, 2009	Expired.
2006265985	AU	December 18, 2007	Pending.
2,614,072	CA	June 30, 2006	Pending.
06785933.0	EP	June 30, 2006	Pending.
2008–520302	JP	June 30, 2006	Pending.
11/993,094	US	December 19, 2007	Pending.
08112281.5	HK	November 5, 2008	Pending.
12/240,398	US	September 29, 2008	Pending.
12/211,633	US	September 16, 2008	Pending.

to Passy-Muir, Inc., a company incorporated under the laws of the State of California having its headquarters in Irvine, California. The United States of America is the assignee of the rights of the above inventions. The contemplated exclusive license may be granted in a field of use limited to devices for treating dysphagia and dysphonia.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before January 6, 2011 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The patents and patent applications intended for licensure disclose or cover a system, device and method for rehabilitating dysphagia due to stroke, ex-tubation or coronary bypass surgery. Swallowing recovery alleviates the risk of aspiration by augmenting volitional control using a simultaneous motor act (e.g., such as pressing a button to indicate when they are ready to swallow). It is believed that such motor training also initiates sensory stimulation, immediately preceding the motor act and that such sensory stimulation enhances excitation of a central pattern generator in the brain stem that augments the volitional control of swallowing. This principle is applicable to other neurological impairments; their associated enhancement of voluntary motor act control by the patient initiating immediately concurrent and related sensory stimulations. Neurological impairments that are contemplated include reflex actions involving interactions between afferent and efferent paths (at the spinal cord or in the brain stem) as well as higher order interactions. This invention includes methods for treating neurologically impaired humans using devices such as those that produce vibratory stimulation, pressure stimulation, auditory stimulation, temperature stimulation, visual stimulation, olfactory stimulation, taste stimulation, or a combination of these. Upon activation a vibrator moves and vibrates the larynx. Patients can initiate sensory stimulation immediately prior to the patient's own initiation of a swallow.

Specifically, the device allows the patient coordinate muscular movement with a button press to permit volitional swallowing.

In one aspect of the invention, the device comprises a connector for attaching the device to the patient's neck, substantially over the patient's larynx. The device also comprises a contact section for contacting the patient's neck above the larynx. Additionally, the device also comprises a stimulator for applying at least one stimulus to the patient's larynx. Also, the device comprises an adjustment mechanism for shifting the position of the device over the patient's larynx.

The device can also include a movement sensor for monitoring pressure on the patient's larynx and a swallowing detector. The swallowing detector includes a piezoelectric stretch receptor and a stimulator, coupled to the movement sensor, for applying pressure to a patient's larynx prior to swallowing. The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–30639 Filed 12–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1940–DR; Docket ID FEMA–2010–0002]

Arizona; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona (FEMA–1940–DR), dated October 4, 2010, and related determinations.

DATES: *Effective Date:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 4, 2010.

The Hopi Tribe for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–30607 Filed 12–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Passenger List/Crew List (CBP Form I–418)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing information collection: 1651–0103.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Passenger List/Crew List (CBP Form I–418). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 7, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the 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 estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Passenger List/Crew List.

OMB Number: 1651–0103.

Form Number: CBP Form I–418.

Abstract: CBP Form I–418 is prescribed by the Department of Homeland Security, Customs and Border Protection (CBP), for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by water at any

port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is working to allow for electronic submission of the information on CBP Form I–418. This form is provided for in 8 CFR 251.1, 251.3, and 251.4. A copy of CBP Form I–418 can be found at *http://forms.cbp.gov/pdf/CBP_Form_I418.pdf*

Current Actions: This submission is being made to extend the expiration date with no change to information collected or to CBP Form I–418.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 95,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 95,000.

Dated: December 1, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–30587 Filed 12–6–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Cost Submission

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 30-Day notice and request for comments; Extension and revision of an existing information collection: 1651–0028.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Cost Submission (CBP Form 247). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a revision to CBP Form 247. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 57284) on September 20, 2010, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 6, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Cost Submission.

OMB Number: 1651–0028.

Form Number: 247.

Abstract: The information collected on CBP Form 247, Cost Submission, is used by CBP to assist in correctly calculating the duty on imported merchandise. This form provides details regarding actual costs and helps CBP determine which costs are dutiable and which are not. Based on public comments received, CBP proposes to revise CBP Form 247 by removing outdated information and instructions. This revision will not change the information provided by respondents on CBP Form 247.

This collection of information is provided for by subheadings 9801.00.10, 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS) and by 19 CFR 10.11–10.24, 19 CFR 141.88 and 19 CFR 152.106. CBP Form 247 can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/*.

Current Actions: This submission is being made to extend the expiration date with a revision to CBP Form 247. There are no changes to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated time per Response: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: December 2, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–30589 Filed 12–6–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N262; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before January 6, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: University of Chicago, Chicago, IL; PRT–25872A.

The applicant requests a permit to acquire from Coriell Institute of Medical Research, Camden, NJ, in interstate commerce specimen cultures from endangered non-human primates for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Virginia Safari Park Inc., Natural Bridge, VA; PRT–20209A.

The applicant requests a permit to import 0.0.13, live, captive-born African penguins (*Spheniscus demersus*) for the purpose of enhancement of the survival of the species and public display.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mark Dugger, Snohomish, WA; PRT–18490A.

Applicant: Marc Bunting, Burlingame, KS; PRT–26988A.

Applicant: John Dosch, Zanesville, OH; PRT–26637A.

Applicant: David Erickson, Glasgow, MT; PRT–26648A.

Applicant: Charles Sanchez, Baton Rouge, LA; PRT–26460A.

Applicant: Loralee West, Paoli, PA; PRT–26015A.

Applicant: Roy Trawick, Sandy, UT; PRT–25979A.

Dated: November 19, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–30635 Filed 12–6–10; 8:45 am]

BILLING CODE 4310–55–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 Semiconductor Chips and Products Containing Same,* DN 2771; 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 Rambus Inc. on October 1, 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 semiconductor chips and products containing same The complaint names as respondents Freescale Semiconductor, Inc. of Austin, TX; Broadcom Corporation, of Irvine,

CA; LSI Corporation of Milpitas, CA; MediaTek Inc. of Hsin-Chu, Taiwan; nVidia Corporation of Santa Clara, CA; STMicroelectronics of Geneva, Switzerland; STMicroelectronics Inc., of Carrollton, TX; Asustek Computer Inc. of Taipei City, Taiwan; Asus Computer International Inc. of Fremont, CA; Audio Partnership PLC of London, United Kingdom; Biostar Microtech (U.S.A.) Corp. of City of Industry, CA; Biostar Microtech International Corp. of Hsin Tien, Taiwan; Cisco Systems, Inc. of San Jose, CA; Elitegroup Computer Systems of Taipei, Taiwan; EVGA Corporation of Brea, CA; Galaxy Microsystems Ltd. of Kowloon Bay, KLN, Hong Kong; Garmin International of Olathe, KS; G.B.T. Inc. of City of Industry, CA; Giga-Byte Technology Co., Ltd. of Taipei, Taiwan; Gracom Technologies LLC of City of Industry, CA; Hewlett-Packard Company of Palo Alto, CA; Hitachi Global Storage of San Jose, CA; Jaton Corporation of Fremont, CA; Jaton Technology TPE of Hsi-Chih, Taiwan; Micro-Star International Co., Ltd. of Taipei Hsien, Taiwan; MSI Computer Corporation of City of Industry, CA; Motorola, Inc. of Schaumburg, IL; Oppo Digital, Inc. of Mountain View, CA; Palit Microsystems Ltd. of Taipei, Taiwan; Pine Techonology Holdings, Ltd of North Point, Hong Kong; Seagate Technology of Scotts Valley, CA; Sparkle Computer Co., Ltd. of Taipepi County, Taiwan; Zotac International (MCO) Ltd. of Shatin, N.T., Hong Kong; and Zotac USA Inc. of City of Industry, CA.

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. 2771") 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: December 2, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–30610 Filed 12–6–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–602]

In the Matter of Certain GPS Devices and Products Containing Same; Enforcement Proceeding; Notice of Institution of Formal Enforcement Proceeding; Denial of Motion for Sanctions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the limited exclusion order and cease-and-desist orders issued at the conclusion of the above-captioned investigation. The Commission has also denied a motion for sanctions.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*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 the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The underlying investigation was instituted on May 7, 2007, based on a complaint filed by Global Locate, Inc., a subsidiary of Broadcom Corporation (collectively, "Broadcom"). 72 FR 25777 (2007). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain global positioning system ("GPS") devices and products containing the same by reason of infringement of various claims of U.S. Patent Nos. 6,704,651 ("the '651 patent"); 6,651,000 ("the '000 patent"); 6,606,346 ("the '346 patent"); 6,937,187 ("the '187 patent"); 6,417,801 ("the '801 patent"); and 7,158,080 ("the '080

patent"). The complaint in the underlying investigation named as respondents SiRF Technology, Inc. ("SiRF"), E–TEN Corp. ("E–TEN"), Pharos Science & Applications, Inc. ("Pharos"), MiTAC International Corporation ("MiTAC"), and Mio Technology Limited ("Mio") (collectively, "Respondents").

On January 15, 2009, the Commission found a violation of section 337 by Respondents by reason of infringement of all six asserted patents. The Commission issued a limited exclusion and cease-and-desist orders against SiRF, Pharos, and Mio. The remedial orders are directed to GPS devices and products containing the same that infringe or are covered by certain claims of the '346, '651, '000, '080, '187, and/or '801 patents. Respondents subsequently appealed the Commission's final determination to the United States Court of Appeals for Federal Circuit ("Federal Circuit"). In a precedential opinion issued April 12, 2010, the Federal Circuit affirmed the Commission's Final Determination in all respects.

On August 16, 2010, the Commission instituted modification proceedings under 19 CFR 210.76 based on a petition for modification filed by Respondents. At the same time, the Commission denied a petition for modification filed by Broadcom. The modification proceedings are currently ongoing.

On October 7, 2010, Broadcom filed a complaint seeking institution of a formal enforcement proceeding to enforce the limited exclusion order and cease-and-desist orders against Respondents under Commission rule 210.75(b), 19 CFR 210.75(b). The enforcement complaint named SiRF, MiTAC, Mio, Pharos, E–TEN, MiTAC Digitial Corporation ("MiTAC Digital"), and CSR plc ("CSR") as proposed enforcement respondents. Shortly after the enforcement complaint was filed, Broadcom withdrew its allegations with respect to E–TEN.

On October 22, 2010, the proposed enforcement respondents filed a motion with the Commission requesting sanctions against Broadcom. The motion alleges, among other things, that Broadcom's enforcement complaint does not comply with Commission rule 210.4(c), 19 CFR 210.4(c), regarding representations made to the Commission. On November 3, 2010, Broadcom opposed the motion. On November 9, 2010, the proposed enforcement respondents filed a motion for leave to reply in support of their motion for sanctions. The Commission has denied the motion for sanctions and the motion for leave.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, 19 CFR 210.75, the Commission has determined to institute a formal enforcement proceeding to determine whether the respondents are in violation of the Commission's limited exclusion order and cease-and-desist orders issued in the investigation, and what, if any, enforcement measures are appropriate.

The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Broadcom, (2) respondents SiRF, MiTAC, MiTAC Digital, Mio, Pharos, and CSR; and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.
Issued: December 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–30617 Filed 12–6–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–376 and 563–564 (Third Review)]

Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in September 2010 to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. On November 5, 2010, the Department of Commerce published notice that it was revoking the orders effective October 20, 2010, "{b}ecause no interested domestic party responded to the sunset review notice of initiation by the applicable deadline * * *" (75 FR 68324). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

DATES: *Effective Date:* October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *http://www.usitc.gov.*

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: December 1, 2010.

[FR Doc. 2010–30611 Filed 12–6–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Department of Justice policy, notice is hereby given that on December 1, 2010 a proposed Consent Decree with Brown County and the City of Green Bay was lodged with the United States District Court for the Eastern District of Wisconsin in a case captioned *United States and the State of Wisconsin* v. *NCR Corp., et al.,* Case No. 10–C–910 (E.D. Wis.). The Complaint in that case alleges claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–75, against Brown County, the City of Green Bay, and twelve other defendants concerning polychlorinated biphenyl contamination at the Lower Fox River and Green Bay Superfund Site in northeastern Wisconsin (the "Site").

If approved by the Court after a public comment period, the proposed Consent Decree would resolve Brown County's and the City of Green Bay's potential liability for response costs, response actions, and natural resource damages associated with the Site, on the terms and conditions set forth in the Decree. The proposed Consent Decree also

would resolve the United States Government's potential liability for response costs, response actions, and natural resource damages associated with the Site under CERCLA. Under the proposed Consent Decree, Brown County, Green Bay, and the United States would pay a total of $5.2 million ($350,000 each from Brown County and Green Bay and $4.5 million from the United States). If the Decree is approved, the $5.2 million would be paid into a set of Site-specific special accounts for use in financing future cleanup and natural resource restoration work at the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcommentees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States and the State of Wisconsin* v. *NCR Corp., et al.,* Case No. 10–C–910 (E.D. Wis.) and D.J. Ref. No. 90–11–2–1045/3.

The Consent Decree may be examined at: (1) The offices of the United States Attorney, 517 E. Wisconsin Avenue, Room 530, Milwaukee, Wisconsin; and (2) the offices of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, 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 $11.00 (44 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–30572 Filed 12–6–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Graftech International Ltd., Et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *GrafTech International Ltd., et al.,* Civil Action No. 1:10–cv–02039. On November 29, 2010, the United States filed a Complaint alleging that the proposed acquisition by GrafTech International Ltd. ("GrafTech") of Seadrift Coke L.P. ("Seadrift") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires that GrafTech and Seadrift modify an existing supply agreement with one of Seadrift's competitors in the provision of petroleum needle coke, ConocoPhillips Company ("Conoco"), to remove terms that might have facilitated the sharing of pricing and production information. In addition, future supply agreements between GrafTech and Conoco must not provide Seadrift the means with which to verify customer-specific competitor pricing or production. In order to ensure compliance with these provisions, GrafTech must provide to the United States: (1) All future agreements between Conoco and GrafTech for the provision of petroleum needle coke; and (2) Seadrift documents prepared in the ordinary course of business that demonstrate Seadrift's production, capacity and sales. GrafTech must also institute a firewall, which restricts the flow of competitively sensitive information to and from Conoco during GrafTech's supply negotiations with that company, as well as preventing the flow of any competitively sensitive information to GrafTech personnel that may be provided to Seadrift from its customers.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530, *Plaintiff,*

v.

Graftech International Ltd., 2900 Snow Road, Parma, Ohio 44130, and

Seadrift Coke L.P., 8618 Highway 185 North, Port Lavaca, Texas 77979, *Defendants.*

Case No.: 1:10–Cv–02039
Judge: Rosemary M. Collyer
Deck Type: Antitrust
Date Stamp: November 29, 2010

Complaint

Plaintiff, the United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift") to obtain a permanent injunction and other relief to remedy the harm to competition caused by GrafTech's acquisition of Seadrift. Plaintiff alleges as follows:

I. Nature of the Action

1. GrafTech is one of the largest producers of graphite electrodes in the world. On April 1, 2010, GrafTech agreed to acquire the 81.1 percent of Seadrift that it does not already own for approximately $308.1 million. Seadrift produces petroleum needle coke, the primary input in the production of graphite electrodes.

2. Historically, GrafTech has sourced the majority of its petroleum needle coke from Seadrift's competitor, ConocoPhillips Company ("Conoco"). At various times, there have been constraints in the supply of needle coke. Beginning January 1, 2001, GrafTech and Conoco formalized their relationship by negotiating two, nearly-

identical, long-term supply agreements for petroleum needle coke supplied from Conoco's two production facilities, in Lake Charles, Louisiana, and South Killinghorne, England (collectively referred to hereinafter as "Supply Agreement").

3. The Supply Agreement provides each party with the ability to audit the books, records, and documents of the other to ensure compliance. Though the "termination clause" of the Supply Agreement was recently activated, notice of termination essentially locks in the terms of the Supply Agreement for three years. During this period, Conoco must provide petroleum needle coke to GrafTech on a most-favored-nation ("MFN") basis, meaning that prices to GrafTech may not exceed the lowest price charged by Conoco to its other customers. To ensure compliance with the MFN guarantee, GrafTech could demand to audit Conoco documents reflecting the company's costs, pricing to specific customers, volume of production to each customer and other commercially sensitive terms of sale.

4. GrafTech's acquisition of Seadrift effectively would allow GrafTech to determine Seadrift's capacity and utilization rate for the production and supply of petroleum needle coke. The acquisition would also provide Seadrift with direct access to all of the information GrafTech collects via the Supply Agreement with Conoco. This would allow access to verified, customer-specific pricing and production information between two petroleum needle coke competitors, Seadrift and Conoco. Such control over Seadrift and access to information could facilitate tacit coordination of prices or output. Thus, the merger would remove a significant barrier to collusion among suppliers of petroleum needle coke, enhancing GrafTech's, Seadrift's and Conoco's ability to coordinate prices and output, with the likely effect of increased prices or reduced supply to consumers, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

5. Headquartered in Parma, Ohio, GrafTech, through its graphite power systems division, is the largest manufacturer of graphite electrodes ("graphite electrodes") sold in the United States. GrafTech has no U.S. production facility, but produces graphite electrodes for sale in the United States at some of its international facilities, located in Mexico, Brazil, Africa, France and Spain. GrafTech's revenues from the sale of graphite electrodes were approximately $483 million in 2009.

6. Seadrift, headquartered in Port Lavaca, Texas, is one of two domestic manufacturers of petroleum needle coke, the key input product in the manufacture of graphite electrodes in North America. Seadrift produces petroleum needle coke for sale to customers producing graphite electrodes sold in the United States from a single manufacturing plant, also located in Port Lavaca. The Port Lavaca plant has an annual production capacity of approximately 150,000 metric tons of petroleum needle coke, representing approximately 19 percent of worldwide petroleum needle coke capacity.

III. Jurisdiction and Venue

7. The United States brings this action against defendants GrafTech and Seadrift under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent GrafTech from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendant GrafTech manufactures, sells and provides services related to graphite electrodes sold in the United States and in the flow of interstate commerce. GrafTech's manufacture, sale and provision of services related to graphite electrodes substantially affect interstate commerce. Defendant Seadrift produces and sells petroleum needle coke in the United States in the flow of interstate commerce, and those activities substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 25 and 28 U.S.C. 1331 and 1337.

9. Defendants have consented to venue and personal jurisdiction in this judicial district.

V. Trade and Commerce

A. Relevant Market

10. Petroleum needle coke, a crystalline form of carbon derived from decant oil, is the key ingredient in, and is used only in, the production of graphite electrodes. Graphite electrode producers such as GrafTech combine petroleum needle coke with pitch adhesives and other inputs to form cylinders that are shot through with electricity and baked to produce graphite electrodes. Graphite electrodes are then assembled into columns using connecting pins and sold to steel manufacturers for use in furnaces and foundries. Steel manufacturers dip the graphite electrodes into the belly of an electric arc furnace and use the graphite electrodes as a conductor to shoot electricity into the furnace, heating the furnace and melting scrap steel.

11. Graphite electrodes oxidize and gradually are consumed. They are replaced about every eight hours. Graphite electrodes that oxidize too quickly or break while in use reduce the efficiency of the furnace and, in the case of breakage, require the electric arc furnace to be shut down so the fragments can be extracted from the molten steel, which imposes a significant cost on steel producers. The quality of the petroleum needle coke used to make the graphite electrode is the most important factor in preventing breakage or accelerated consumption of graphite electrodes.

12. Petroleum needle coke, relative to other varieties of coke, is distinguished by its needle-like structure and its quality, which is measured by the presence of impurities, principally sulfur, nitrogen and ash. The needle-like structure of petroleum needle coke encourages expansion along the length of the electrode, rather than the width, which reduces the likelihood of fractures. Impurities reduce quality because they increase the coefficient of thermal expansion and electrical resistivity of the graphite electrode, which can lead to uneven expansion and a build-up of heat and causes the graphite electrode to oxidize rapidly and break. Petroleum needle coke is typically low in these impurities. In order to minimize fractures caused by disproportionate expansion over the width of an electrode, and minimize the effect of impurities, large-diameter graphite electrodes (18 inches to 32 inches) employed in high-intensity electric arc furnace applications are comprised almost exclusively of petroleum needle coke.

13. An alternative form of needle coke is produced from coal tar pitch. Pitch needle coke ("pitch coke") tends to include more impurities than petroleum needle coke. Pitch coke can be used to make graphite electrodes, but it must be processed differently, is more costly and time-consuming to produce, and typically results in a lower quality graphite electrode. Pitch coke cannot be blended with petroleum needle coke. Because of these disadvantages, most producers of large-diameter graphite electrodes do not use pitch coke as an input.

14. Anode coke, like petroleum needle coke, is a derivative of decant oil, but it lacks the needle-like structure of petroleum needle coke. Instead, anode coke particles are spherical and cause a graphite electrode to expand across the width rather than just the length of the electrode. This pattern of expansion makes fractures more likely, particularly in large-diameter graphite

electrodes, the greater width of which exaggerates the effect. Although producers may blend anode coke with petroleum needle coke to produce graphite electrodes, most producers carefully restrict the amount of anode coke used in graphite electrode production and do not use significant quantities of anode coke in the production of large-diameter graphite electrodes.

15. Petroleum needle coke customers can and do obtain petroleum needle coke from multiple sources worldwide. Petroleum needle coke is produced at manufacturing facilities located in the United States, England and Japan. Each facility ships petroleum needle coke internationally, and transportation costs comprise a small fraction of the cost of petroleum needle coke. Petroleum needle coke purchasers typically pay the same price for petroleum needle coke regardless of the location of the production facility or the destination.

16. A small but significant increase in the price of petroleum needle coke would not cause customers to substitute volumes of pitch needle coke or anode coke sufficient to make such a price increase unprofitable. Accordingly, worldwide production and sale of petroleum needle coke is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Competitive Effects

1. Market Structure and Supply Relationships

17. Four significant firms operating out of five facilities worldwide produce petroleum needle coke. There have been instances in which demand has exceeded available supply; artificial restrictions on output could lead to supply constraints and higher prices. Conoco has the largest production capacity of all petroleum needle coke producers, and is the only manufacturer with two production facilities, including a plant in South Killinghorne, England and another in Lake Charles, Louisiana. Conoco's two plants collectively represent 55 percent of worldwide petroleum needle coke capacity. Seadrift owns a single plant in Port Lavaca, Louisiana. Seadrift is the second-largest producer of petroleum needle coke, with approximately 19 percent of capacity. It historically has sold petroleum needle coke to most of the major graphite electrode producers. GrafTech's acquisition of Seadrift would enable it to alter Seadrift's capacity and utilization rates. Two other producers each operate a plant in Japan; historically, the Japanese producers have not significantly increased the amount of petroleum needle coke they ship into the United States from year to year.

18. Conoco supplies nearly every graphite electrode manufacturer in the world with some portion of the manufacturer's petroleum needle coke requirements, including GrafTech and all of its graphite electrode competitors. Even following its acquisition of Seadrift, GrafTech intends to continue to purchase petroleum needle coke from Conoco. All major graphite electrode producers have multiple plants worldwide, and typically rely upon either Conoco or Seadrift for some portion of their petroleum needle coke requirements. Supply agreements are typically negotiated annually for the following year, with sporadic monthly purchases as-needed to fill gaps between projected and real demand.

2. GrafTech-Conoco Long-Term Supply Relationship

19. Over the past ten years, GrafTech has been engaged in a long-term supply arrangement with Conoco, buying the vast majority of its petroleum needle coke requirements from Conoco's South Killinghorne and Lake Charles facilities. The Supply Agreement includes a target range for the volume of purchases by GrafTech from each Conoco plant, and is modified annually to record negotiated price terms for the coming year.

20. The Supply Agreement includes a clause entitled "Audit Rights," which permit Conoco and GrafTech to audit each other's books, records and documents. The audit rights do not exclude contemporaneous books, records and documents.

21. The Supply Agreement also includes a "termination clause," which is activated upon notice by either party. When activated, the termination clause requires the Supply Agreement to continue for a period of three years, with modified volume commitments and pricing terms. GrafTech's obligations to buy petroleum needle coke from Conoco are based on past purchase volumes and decline each year by a set percentage. Conoco, in turn, must grant GrafTech MFN pricing for that three-year period, which requires that GrafTech's prices shall be no higher than the lowest price charged by Conoco for the relevant grade of petroleum needle coke among all of its petroleum needle coke customers.

22. On September 27, 2010, Conoco notified GrafTech that it intended to terminate the Supply Agreement. Activation of the termination clause converted the price term to MFN pricing. The audit rights clause remains unchanged.

23. Even after the three-year period remaining under the Supply Agreement expires, GrafTech intends to continue to contract with Conoco for a substantial volume of petroleum needle coke. Such a relationship could expose GrafTech to information regarding Conoco's pricing, supply and output. GrafTech could utilize such information to coordinate petroleum needle coke pricing and output.

3. Impact of GrafTech's Merger with Seadrift

24. On April 1, 2010, GrafTech agreed to acquire the outstanding majority interest in Seadrift. When announcing the proposed acquisition, GrafTech also described various improvements that it intended to make to the Seadrift facility, including expansion in available capacity, in anticipation of using a significant volume of Seadrift's production following the acquisition.

25. The audit rights clause provides GrafTech access to Conoco's facilities, books, records and documents to ensure compliance with the Supply Agreement. The MFN clause now requires that Conoco charge to GrafTech prices no higher than the lowest price it offers to other graphite electrode producers. To ensure compliance with the MFN, GrafTech could request to audit Conoco's books, records and documents reflecting prices charged to specific graphite electrode customers. Such an audit also could reveal Conoco's costs, production, terms of sale and related commercial information. Access to invoices and billing records, for example, would provide direct information about volume sold, prices charged and the credit terms under which payment was collected for individual customers.

26. Once Seadrift is acquired by GrafTech, it will have access to the same information as GrafTech under the Supply Agreement, including any information arising from GrafTech's access to Conoco's facilities and audits of Conoco's contemporaneous books, records and documents. Because Conoco sells petroleum needle coke to nearly every graphite electrode producer in the world, the scope of that access is essentially market-wide.

27. Consequently, post-merger, GrafTech would be able to exercise rights under the Supply Agreement at the behest of Seadrift, Conoco's competitor. Indeed, the activation of the MFN clause maximizes GrafTech's ability to verify the prices that Seadrift's primary competitor charges to specific petroleum needle coke customers, and

the volume of petroleum needle coke promised to each customer. The merger would allow the exploitation of those rights by Seadrift. Such access by a competitor could facilitate a tacit understanding between Seadrift and Conoco about the prices that should be charged to each customer, or the rate of output of each facility. Further, the ability to verify a competitor's contemporaneous, customer-specific production and pricing would eliminate the incentive and opportunity to deviate from any such understanding, as detection would be likely, removing another barrier to coordination.

28. Accordingly, the MFN and audit rights clauses would substantially reduce competition in the petroleum needle coke market, which likely would lead to higher prices and reduced output, in violation of Section 7 of the Clayton Act.

29. Even in the absence of the MFN and Audit Rights, however, the ongoing supply relationship between GrafTech and Conoco could provide GrafTech (and hence Seadrift) with inappropriate competitive information regarding pricing, supply and output. Such information could enhance the potential for price and output coordination.

V. Violation Alleged

30. GrafTech's acquisition of Seadrift, by permitting access to verified, customer-specific production, pricing and related commercial information by competitors Seadrift and Conoco under the terms of the Supply Agreement, and possibly other supply arrangements, would substantially reduce competition and likely increase prices and reduce output in the petroleum needle coke market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Requested Relief

31. Plaintiff requests that this Court:

a. Adjudge and decree that GrafTech's acquisition of Seadrift would violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Compel GrafTech to strike the audit and MFN clauses from the Supply Agreement;

c. Prohibit GrafTech from including in future contracts with Conoco any term that conveys an audit right, MFN pricing, or otherwise allows the exchange of third-party production, pricing and related commercial information between GrafTech and Conoco;

d. Award Plaintiff the cost of this action; and

e. Grant Plaintiff such other and further relief as the case requires and the Court deems just and proper.

Dated: November 29, 2010

Respectfully Submitted,

For Plaintiff United States of America:

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Graftech International Ltd. And Seadrift Coke L.P., Defendants.*

Case No.: 1:10–Cv–02039.
Judge: Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: November 29, 2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift") entered into an Agreement and Plan of Merger, dated April 1, 2010, pursuant to which GrafTech agreed to acquire the 81.1 percent of Seadrift stock it does not already own for about $308.1 million.

The United States filed a civil antitrust Complaint on November 29, 2010, seeking to enjoin GrafTech's proposed acquisition of Seadrift. The Complaint alleges that the acquisition likely will substantially lessen competition in the worldwide sale of petroleum needle coke used to manufacture graphite electrodes, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in higher prices, reduced output and less favorable terms of sale in the global petroleum needle coke market.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment, which is designed to remedy the expected anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, GrafTech and Seadrift are required to modify the long-term petroleum needle coke supply agreements ("Supply Agreement") between GrafTech and ConocoPhillips Company ("Conoco"), a competitor of Seadrift, and provides for ongoing reports regarding petroleum needle coke demand, capacity utilization and the imposition of firewalls. After the proposed acquisition, GrafTech would control Seadrift's capacity utilization for petroleum needle coke. Seadrift effectively would also have direct access to all of the information it collects from its customers as well as the information GrafTech collects via the Supply Agreement. The Supply Agreement would include the ability to verify Conoco's customer-specific pricing, volume of production and other commercially sensitive information, via the audit rights and most-favored-nation ("MFN") pricing clauses included therein.[1] Future supply arrangements also could provide similar opportunities to access commercially sensitive information, as well as other sensitive information from Seadrift's own customers. The ability of a vendor to verify current commercial terms granted by a competitor could facilitate a tacit understanding on price or output and provide a means to detect cheating on such an understanding, increasing the likelihood of coordination. Accordingly, as the merger would remove a significant barrier to collusion, it likely would lead to anticompetitive effects.

Under the proposed Final Judgment, the Defendants are permitted only to engage in ongoing and future purchases of petroleum needle coke from Conoco pursuant to a revised supply agreement, one that does not provide Seadrift the means to verify customer-specific competitor pricing or production. The proposed Final Judgment also bars

[1] GrafTech has not received MFN pricing from Conoco under this clause to date. Conoco's September 2010 termination of the Supply Agreement activated this dormant provision, which would have applied to sales beginning in 2011.

GrafTech from negotiating any future agreement with Conoco that would confer any such rights to Seadrift, for a period of ten years from entry of the proposed Final Judgment. In order to ensure compliance with these provisions, all future agreements for the provision of petroleum needle coke from Conoco to GrafTech and Seadrift must be provided to the United States within two business days of execution. GrafTech also must produce documents prepared in the ordinary course of business that demonstrate Seadrift's production, capacity and sales. The proposed Final Judgment also restricts the flow of competitively sensitive information between GrafTech personnel who negotiate GrafTech's supply of petroleum needle coke from Conoco, and Seadrift personnel who make decisions about Seadrift's production and prices.

The United States believes the provisions in the proposed Final Judgment will remove the potential for competitors to verify customer-specific pricing, production and other commercial terms. At the same time, the proposed Final Judgment preserves the quality improvements likely after the merger, and would not impede the potential cost savings that the parties claim will result from the merger, and that may incentivize discounting in the downstream market for graphite electrodes.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof for a period of ten years after entry of the Final Judgment.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants

GrafTech, headquartered in Parma, Ohio, through its graphite power systems division, is the largest manufacturer of graphite electrodes sold in the United States, and one of the two leading providers of graphite electrodes worldwide. GrafTech produces graphite electrodes at facilities in Mexico, Brazil, Africa, France and Spain. GrafTech realized revenue of approximately $483 million from the sale of graphite electrodes in 2009.

Seadrift, headquartered in Port Lavaca, Texas, is one of two U.S. manufacturers of petroleum needle coke, the key input in the manufacture of graphite electrodes in North America. Seadrift operates a single manufacturing plant, which has a current annual production capacity of approximately 150,000 metric tons of petroleum needle coke, representing approximately 19 percent of worldwide petroleum needle coke capacity, and Seadrift realized revenue of $62 million in 2009. Post-acquisition, GrafTech would control Seadrift's capacity and utilization rates.

B. The Competitive Effects of the Acquisition on the Market for Petroleum Needle Coke

1. Relevant Market

Petroleum needle coke is used exclusively in the production of graphite electrodes. Graphite electrodes are large columns of virtually pure graphite used in the production of steel from scrap in electric arc furnaces, ladle metallurgy furnaces, and foundries. As graphite electrodes heat the steel, they are consumed through oxidation, and are replaced by connecting the end of the new graphite electrode with the end of the chain of graphite electrodes in the furnace. The highest-intensity electric arc furnaces require large-diameter graphite electrodes, which range in size between 18 inches in diameter to 32 inches in diameter.

Petroleum needle coke is the key material input into large-diameter graphite electrodes used in electric arc furnaces in the United States. All sizes of graphite electrodes are manufactured out of needle coke, but some small-diameter graphite electrode manufacturers blend a percentage of anode coke with the needle coke during the production process. Large-diameter graphite electrodes require approximately one metric ton of raw needle coke to produce one metric ton of finished graphite electrode.

Needle coke is a nearly pure form of carbon that can be derived either from petroleum ("petroleum needle coke") or coal tar pitch ("pitch coke"). Petroleum needle coke is manufactured from decant oil, a byproduct from the catalytic cracking process of refining crude oil. Petroleum needle coke's structure differs from that of anode coke, also derived from decant oil, in that it is crystalline with needle-like particles. This structure provides a low coefficient of thermal expansion, which allows it to maintain its shape in high-temperature settings, and a low electrical resistivity, permitting efficient conduction of electricity. Additionally, petroleum needle coke has a lower content of sulfur and nitrogen than does pitch coke, which minimizes changes in shape caused when coke over-expands during graphite electrode manufacturing, creating cracks or voids within the graphite electrode, drastically altering both its strength and density.

Graphite electrode producers obtain their supply of petroleum needle coke from one or more of four firms: Seadrift, Conoco, and two vendors located in Japan. Historically, the Japanese suppliers have not substantially increased the volume of petroleum needle coke that they ship into the United States from year to year. Conoco is the only manufacturer with two petroleum needle coke production facilities, one in Lake Charles, Louisiana and one in South Killinghorne, England. Conoco, Seadrift, and the Japanese producers all have worldwide customers and ship internationally. There have been instances of supply constraint in the manufacture of petroleum needle coke. Transportation costs make up a small fraction of the cost of petroleum needle coke, and customers typically pay the same price for petroleum needle coke regardless of the location of the production facility or the destination.

Manufacturers of large-diameter graphite electrodes worldwide typically use petroleum needle coke to produce their graphite electrodes and would not, in response to a small but significant increase in price of petroleum needle coke, switch to pitch or anode cokes in sufficient volumes such that the attempted price increase would be defeated or deterred. Thus, worldwide production and sale of petroleum needle coke is a relevant market for purposes of antitrust analysis of the proposed transaction.

2. Anticompetitive Effects

The proposed acquisition of Seadrift by GrafTech could substantially lessen competition in the international petroleum needle coke market because it would allow GrafTech to control Seadrift's capacity and utilization rates for the manufacture of petroleum needle coke, and also provide Seadrift direct access to verified, customer-specific competitor pricing and production information. The basis for the Complaint, and the essence of the expected anticompetitive effect of this acquisition, is that GrafTech's acquisition of Seadrift, Conoco's largest petroleum needle coke competitor, would draw Seadrift into GrafTech's current Supply Agreement and future supply arrangements with Conoco, while also allowing GrafTech to control Seadrift's output. It is GrafTech's control of Seadrift and its addition to

the Conoco alliance, by and through the proposed acquisition, which has triggered a violation of the Clayton Act. It is the consequent agreement between competitors that the proposed Final Judgment is designed to address, by removing the opportunity and means for Seadrift and Conoco to engage in anticompetitive activity under cover of the Supply Agreement, and possibly future supply arrangements.

On September 27, 2010, in response to the proposed merger, the termination clause of the Supply Agreement was activated. The activation of the termination clause has initiated a three-year wind-down period during which GrafTech is obligated to buy specified volumes in each year and Conoco must provide that volume with pricing on an MFN basis. The MFN requires that prices to GrafTech shall be no higher than the lowest price charged by Conoco for the relevant grade of coke among all of its coke customers other than GrafTech. Included among the clauses in the Supply Agreement that remain in place during the wind-down period is the mutual right for GrafTech and Conoco, in order to ensure compliance with the Supply Agreement, to audit each other's books, records and documents, which likely would include current cost information, production schedules, invoices that contain third-party pricing and volume information, records that reveal credit terms, and similar competitively sensitive information. By operation of the merger, the audit clause would extend to Seadrift the information provided to GrafTech, allowing Seadrift to verify the real-time, customer-specific pricing its main competitor charges and the volume of petroleum needle coke sold to nearly every electrode manufacturer in the world.

The legacy audit right included in the Supply Agreement would provide Seadrift with the means to verify a key rival's contemporaneous prices, which could facilitate an understanding between Seadrift and Conoco about the prices to be charged to each customer, and could be used to enforce that understanding by deterring cheating. At the same time, the MFN effectively could have a chilling effect on Conoco's willingness to offer discounts to other graphite electrode customers, because it would have to provide the same discount for the large volume of petroleum needle coke it sells to GrafTech.

Even after the three-year extension of the Supply Agreement expires, however, GrafTech intends to purchase substantial quantities of petroleum needle coke from Conoco via other supply arrangements; combined with its ownership of Seadrift, this could provide the conditions for output coordination.

Exchanges of current price information have the potential to generate anticompetitive effects and, although not *per se* unlawful under the antitrust laws, have consistently been held to violate the Sherman Act. Moreover, the residual audit right in the Supply Agreement provides that GrafTech and Conoco may audit each other's contemporaneous books, records and documents. Post-merger, GrafTech's cost structure would include the production of Seadrift petroleum needle coke. This clause, if left unchecked, would allow Conoco to know Seadrift's volume and cost of production, and would allow GrafTech to review all of Conoco's production volume and costs. Moreover, should the audit clause be used in conjunction with the MFN, to verify that GrafTech was, in fact, receiving the lowest price, for example, Seadrift potentially would have access to its largest competitor's pricing and production to all other customers. Ongoing supply arrangements also have the potential to provide Seadrift, through GrafTech, with competitively sensitive information.

Therefore, GrafTech's acquisition of Seadrift likely will substantially lessen competition in the development, production and sale of petroleum needle coke in the United States, likely leading to higher prices, reduced output and less favorable terms of sale in the worldwide petroleum needle coke market, in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate the anticompetitive effects that otherwise would result from GrafTech's acquisition of Seadrift. Conoco, having activated the termination clause of the Supply Agreement, has initiated the three-year wind-down period during which GrafTech must buy specified volumes each year, and Conoco must provide that volume with pricing on an MFN basis. The audit rights, also included in the Supply Agreement, give GrafTech and Seadrift access to Conoco's pricing and commercial terms to all of its customers, for the purpose of enforcing MFN pricing. The proposed Final Judgment requires GrafTech and Seadrift immediately to abrogate, amend or otherwise alter the current petroleum needle coke Supply Agreement between GrafTech and Conoco to remove the terms related to the ongoing audit rights, sharing of non-public or proprietary information, and MFN pricing.

The proposed Final Judgment also provides that the Department of Justice's Antitrust Division must receive copies of any and all agreements regarding the provision of petroleum needle coke between the defendants and Conoco for the term of the Final Judgment, as well as ordinary course business documents that illuminate Seadrift's output and sales decisions. These provisions ensure that Defendants comply with the proposed Final Judgment and also will serve to deter them from entering into any agreement that may have the effect of enhancing coordination among competing suppliers of petroleum needle coke. Production of contracts between GrafTech and Conoco will allow the Division to monitor future agreements for audit rights or other provisions that facilitate the exchange of proprietary pricing and output information. Production of ordinary course business documents will allow the Division to monitor changes in production in relation to capacity that may suggest output coordination. As an additional safeguard, the proposed Final Judgment requires that GrafTech strictly segregate employees who negotiate terms with Conoco from those who make decisions about pricing and production at Seadrift. Similarly, Seadrift employees who negotiate arrangements with competitors of GrafTech will be prevented from sharing any competitively sensitive information thereby obtained.

Further, striking the audit clause and MFN provision of the Supply Agreement will not imperil the potential efficiencies that GrafTech expects will result from the merger. GrafTech anticipates substantial, merger-specific efficiencies by internal consumption of Seadrift petroleum needle coke, which would allow the elimination of double margins. Should this result in lower GrafTech prices for graphite electrodes downstream, it likely would incentivize other graphite electrode competitors to reduce prices in response to that competition. Verified plans to improve the quality of Seadrift petroleum needle coke likely will benefit Seadrift's graphite electrode customers, as well as the downstream consumers of finished graphite electrodes, in the future. Thus, by removing the audit rights and MFN provisions from the Supply Agreement, and providing other protections in connection with the future supply arrangements, that source of potential harm is eliminated without threatening to deprive consumers of the pro-competitive efficiencies that GrafTech

and Seadrift expect their merger to generate.

As a result of the proposed Final Judgment, Seadrift and Conoco will remain independent, competitive suppliers of petroleum needle coke, while GrafTech will be free to realize the efficiencies it expects to result from the Seadrift acquisition. Finally, in the future, any new agreement between Seadrift and Conoco that might facilitate collusion by incorporating terms such as those required to be abrogated by the proposed Final Judgment will be deterred.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendant.

V. Procedures Applicable for Approval or Modification of the Proposed Final Judgment

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have litigated and sought preliminary and permanent injunctions against Defendant GrafTech's acquisition of Seadrift, in order to avoid providing Seadrift access to competitively sensitive information available under the Supply Agreement. The United States is satisfied, however, that the proposed Final Judgment will preserve competition for the provision of petroleum needle coke without the time or expense of litigation. The proposed Final Judgment will achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the*

public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. *Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Republic Serv., Inc.,* 2010–2 Trade Cas. (CCH) ¶77, 097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *10 (D.D.C. July 15, 2010) (finding that "[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *Republic Serv.,* 2010 U.S. Dist. LEXIS 70895, at *2–3 (entering final judgment "[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestiture will remedy the antitrust violations alleged in the complaint").

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 29, 2010.

Respectfully submitted,

/s/

Stephanie A. Fleming, Esq.,
United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530, (202) 514–9228, stephanie.fleming@usdoj.gov.

Certificate of Service

I, Stephanie A. Fleming, hereby certify that on November 29, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants GrafTech International Ltd. and Seadrift Coke L.P. by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

Counsel for Defendant GrafTech: Jonathan Gleklen, Esq., Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004.

Counsel for Defendant Seadrift: Craig Seebald, Esq., Joel Grosberg, Esq., McDermott, Will & Emery, 600 13th Street, NW., Washington, DC 20006.

Stephanie A. Fleming, Esq., United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 514–9228, *Stephanie.fleming@usdoj.gov.*

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

United States District Court for the District of District of Columbia

United States of America, *Plaintiff*, v. GrafTech International Ltd. and Seadrift Coke L.P., *Defendants*.

Case No.: 1:10–Cv–02039.
Judge: Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: November 29, 2010.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on November 29, 2010, and the United States and Defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, this Final Judgment requires the prompt and certain modification of particular contracts to which GrafTech is a party and the imposition of certain conduct restrictions and obligations on GrafTech to assure that competition is maintained;

And whereas, GrafTech has represented to the United States that the contract modifications required below can and will be made, that GrafTech will abide by the conduct restrictions and obligations required below, and that GrafTech will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged And Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "GrafTech" means defendant GrafTech International Ltd., a Delaware corporation with its headquarters in Parma, Ohio, its predecessor, UCAR International Ltd., its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Seadrift" means defendant Seadrift Coke L.P., a Delaware Limited Partnership with its headquarters in Port Lavaca, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Conoco" means ConocoPhillips Company, a Delaware corporation with headquarters in Houston, Texas, which includes the subsidiaries managing the production facilities in Lake Charles, Louisiana and South Killinghorne, England, as well as all other successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. The "Supply Agreement" encompasses those two agreements effective January 1, 2001, between GrafTech and Conoco, which relate to the provision of petroleum needle coke and any agreement created to supersede, modify or amend those agreements.

E. "Contract" means any agreement, understanding, amendment, modification or other document describing the commercial terms of sale.

F. "Merger" means GrafTech's proposed purchase of the 81.1 percent of voting securities of Seadrift that it does not already own, and the concurrent merger between GrafTech and Seadrift, pursuant to the agreement executed on April 1, 2010.

G. "Exempted Employee" means any employee of Defendants who is not a GrafTech Covered Employee or Seadrift Covered Employee, including: (a) GrafTech's Chief Executive Officer and Chief Financial Officer; and (b) any employee of Defendants whose primary responsibilities includes accounting, tax, corporate development, human resources, legal, information systems, and/or finance.

H. "GrafTech Covered Employee" means any employee of GrafTech other than an Exempted Employee whose principal job responsibility involves the operation or day-to-day management of GrafTech's Industrial Materials or Engineered Solutions businesses.

I. "Petroleum Needle Coke Supplier Confidential Information" means all information provided, disclosed, or otherwise made available to GrafTech by petroleum needle coke suppliers or potential petroleum needle coke suppliers that is not in the public domain, including but not limited to information related to such suppliers' current or future output, capacity, prices, or forecasted shutdown schedules, but does not include prices paid by GrafTech or quantities purchased by GrafTech from a petroleum needle coke supplier.

J. "Seadrift Covered Employee" means any employee of Seadrift other than an Exempted Employee whose principal job responsibility involves the operation or day-to-day management of Seadrift's petroleum needle coke business.

K. "Seadrift Customer Confidential Information" means all information provided, disclosed, or otherwise made available to Seadrift by Seadrift customers or potential customers that is not in the public domain, including but not limited to information related to such customers' current or future purchases, output, capacity, prices, or forecasted shutdown schedules.

III. Applicability

This Final Judgment applies to Defendants GrafTech and Seadrift, as defined above, and all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

A. Defendants shall not consummate the Merger until the Supply Agreements have been modified in a manner consistent with this Final Judgment, including compliance with the following conditions:

1. The audit rights described in section 5.6 of the Supply Agreement shall be deleted and have no further force or effect.

2. The most-favored-nation basis price clause included in section 12.3.C of the Supply Agreement shall be deleted and have no further force or effect.

B. Defendants shall not agree to incorporate the following provisions in any future contract with Conoco for the provision of petroleum needle coke:

1. Any provision that grants to Defendants the right to audit or otherwise review the non-public financial and commercial records of Conoco, or grants such rights to Conoco with respect to Defendant's non-public financial and commercial records.

2. Any provision that grants to Defendants the right to obtain any non-public information about third-party petroleum needle coke pricing or related commercial terms from Conoco, or grants such rights to Conoco with respect to Defendants' non-public information about third-party petroleum needle coke pricing or related commercial terms.

C. Beginning on the date of entry of this Final Judgment and continuing for the term of the Final Judgment:

1. Within two business days of execution, Defendants shall provide to the United States complete and unredacted copies of any Contract formed between Defendants and Conoco relating to the provision of petroleum needle coke.

2. Within ten business days of the end of each quarter, Defendants shall provide to the United States a copy of documents prepared in the ordinary course of business sufficient to show:

(a) Seadrift's projection of demand and sales for petroleum needle coke in the subsequent twelve-month period;

(b) Seadrift's year-to-date production and sales of petroleum needle coke versus forecast; and

(c) Seadrift's changes to petroleum needle coke production capacity or other major capital projects, and capital spending by project.

3. If, at any time, Defendants elect to make a change in Seadrift's capacity or production plans that changes Seadrift's annual output by more than ten percent and that is not reflected in the most recent document provided in response to Paragraph IV(C)(1) or (2), Defendants shall:

(a) within two business days provide the Division written notice of that change; and

(b) within ten business days provide any documents prepared in the ordinary course of business that describe the change, reflect the reasons for the change or project the impact of that change.

D. All documents required to be produced to the United States under Paragraph IV(C) shall be delivered by certified mail to the following address: Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth St., NW., Washington, DC 20530.

V. Prohibited Conduct

A. Subject to Paragraph V(B), Defendants shall not:

1. disclose to any GrafTech Covered Employee any Seadrift Customer Confidential Information; or

2. disclose to any Seadrift Covered Employee any Petroleum Needle Coke Supplier Confidential Information.

B. Notwithstanding the provisions of Paragraph V(A), GrafTech may:

1. disclose to Seadrift Covered Employees information regarding GrafTech's purchases of petroleum needle coke from petroleum needle coke suppliers other than Seadrift;

2. disclose to any GrafTech Covered Employee any Petroleum Needle Coke Supplier Confidential Information;

3. disclose Petroleum Needle Coke Supplier Confidential Information to an Exempted Employee who requires the information in order to perform his or her job function(s); provided, however, that such Exempted Employee may not use Petroleum Needle Coke Supplier Confidential Information to perform any job function(s) that primarily involve(s) the day-to-day operation or management of Seadrift's needle coke business;

4. disclose Seadrift Customer Confidential Information to an Exempted Employee who requires the information in order to perform his or her job function(s); provided, however, that such Exempted Employee may not use Seadrift Customer Confidential Information to perform any job function(s) that primarily involve(s) the day-to-day operation or management of GrafTech's Industrial Materials or Engineered Solutions businesses; and

5. disclose Petroleum Needle Coke Supplier Confidential Information and/or Seadrift Customer Confidential Information to any Defendant employee where so required by law, government regulation, legal process, or court order, so long as such disclosure is limited to fulfillment of that purpose.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("Antitrust Division"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section or pursuant to Paragraph IV(C) shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments

filed with the Court, entry of this Final Judgment is in the public interest.

Date: ___, 20____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Honorable

[FR Doc. 2010–30621 Filed 12–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,083]

American Axle & Manufacturing Detroit Manufacturing Complex Holbrook Avenue and Saint Aubin Including On-Site Leased Workers From Paint Tech International Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 24, 2008, applicable to workers of American Axle & Manufacturing, Detroit Manufacturing Complex, Detroit, Michigan. The Department's Notice was published in the **Federal Register** on December 10, 2008 (73 FR 75137).

The Department's Notice was amended on January 8, 2009 to clarify that the certification is to cover all workers of American Axle & Manufacturing, Detroit Manufacturing Complex, including those workers in forge and non-forge plants at Holbrook Avenue and Saint Aubin, Detroit, Michigan (subject firm). The Department's Notice was published in the **Federal Register** on January 15, 2009 (74 FR 2633).

The subject firm produces drivetrain components for the automotive industry including axle, steering, linkage, and other metal-formed products.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information revealed that workers leased from Paint Tech International were employed on-site at the Detroit, Michigan location of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin. The Department has determined that these workers were sufficiently under the control of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Paint Tech International working on-site at the Detroit, Michigan location of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin.

The amended notice applicable to TA–W–64,083 is hereby issued as follows:

All workers of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin, including on-site leased workers from Paint Tech International, Detroit, Michigan, who became totally or partially separated from employment on or after September 16, 2007, through November 24, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30539 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,250]

Charming Shoppes of Delaware, Inc. Accounts Payable, Rent, Merchandise Disbursement Divisions, and Payroll Department Within the Shared Service Center, Bensalem, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 2010, applicable to workers of Charming Shoppes of Delaware, Inc., including the Accounts Payable, Rent, and Merchandise Disbursement Divisions within the Shared Service Center, Bensalem, Pennsylvania. The Department's notice of determination was published in the **Federal Register** on July 16, 2010 (75 FR 41526).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers, all of the same division, are engaged in activities related to the supply of accounts payable, rent, merchandise disbursement services, and payroll.

The company reports that workers engaged in activities related to the supply of payroll services were inadvertently excluded from the certification decision.

The amended notice applicable to TA–W–74,250 is hereby issued as follows:

All workers of Charming Shoppes of Delaware, Inc., including the Accounts Payable, Rent, Merchandise Disbursement Divisions, and Payroll Department within the Shared Service Center, Bensalem, Pennsylvania who became totally or partially separated from employment on or after June 15, 2009 through June 30, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 24th day of November 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30536 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,892]

Bostik, Inc. Formerly Known as ATO Findley Marshall, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 2009, applicable to workers of Bostik, Inc., a subsidiary of Elf Aquitaine, Marshall, Michigan. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7033).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of adhesives and sealants.

New information shows that Bostik, Inc. was formerly known as ATO

Findley. Some workers separated from employment at Bostik, Inc. had their wages reported under a separate unemployment insurance (UI) tax account under the name ATO Findley.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of adhesives and sealants to the United Kingdom.

The amended notice applicable to TA–W–73,310 is hereby issued as follows:

All workers of Bostik, Inc., formerly known as ATO Findley, Marshall, Michigan, who became totally or partially separated from employment on or after November 18, 2008, through December 28, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30545 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,545; TA–W–74,545A]

HAVI Logistics, North America a Subsidiary of HAVI Group, LP Including On-Site Leased Workers of Express Personnel Services and the La Salle Network, Bloomingdale, IL; Havi Logistics, North America, Lisle, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 3, 2010, applicable to workers of HAVI Logistics, North America, a subsidiary of HAVI Group, LP, including on-site leased workers of Express Personnel Services and The La Salle Network, Bloomingdale, Illinois. The Notice was published in the **Federal Register** on September 21, 2010 (75 FR 57516). The workers are engaged in activities related to the supply of food distribution services.

During the course of an investigation of another petition, the Department obtained information that shows that HAVI Logistics, North America, Lisle, Illinois is an auxiliary facility operating in conjunction with the Bloomingdale, Indiana facility.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift of food distribution services to Japan and Russia.

The amended notice applicable to TA–W–74,545 is hereby issued as follows:

All workers of HAVI Logistics, North America, a subsidiary of HAVI Group, LP, including on-site leased workers of Express Personnel Services and The La Salle Network, Bloomingdale, Illinois (TA–W–74,545) and all workers of HAVI Logistics, North America, Lisle, Illinois (TA–W–74,545A), who became totally or partially separated from employment on or after August 11, 2009, through September 3, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 19th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30538 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,132]

General Motors Corporation Grand Rapids Metal Center Metal Fabricating Division Including On-Site Leased Workers From Securitas, Premier, EDS and Quaker Chemical Grand Rapids, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 2010, applicable to workers of General Motors Corporation, Grand Rapids Metal Center, Metal Fabricating Division, including on-site leased workers from Securitas, Premier and EDS, Grand Rapids, Michigan. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21356).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of metal stampings and sub-assembled metal sheet components.

The company reports that workers leased from Quaker Chemical were employed on-site at the Grand Rapids, Michigan location of General Motors Corporation, Grand Rapids Metal Center, Metal Fabricating Division. The Department has determined that these workers were sufficiently under the control of General Motors Corporation, Grand Rapids Metal Center, Metal Fabricating Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Quaker Chemical working on-site at the Grand Rapids, Michigan location of General Motors Corporation, Grand Rapids Metal Center, Metal Fabricating Division.

The amended notice applicable to TA–W–71,132 is hereby issued as follows:

All workers of General Motors Corporation, Grand Rapids Fabrication Center, Metal Fabrication Division, including on-site leased workers from Quaker Chemical, Grand Rapids, Michigan, who became totally or partially separated from employment on or after May 20, 2008, through March 18, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30541 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74.467]

Zach System Corporation a Subdivision of Zambon Company, SPA Including On-Site Leased Workers of Turner Industries and Go Johnson, La Porte, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 1, 2010, applicable to workers of Zach System Corporation, a subdivision of Zach System SPA, La Porte, Texas, including on-site leased workers from Turner Industries and Go Johnson, La Porte, Texas. The Department's notice of determination was published in the **Federal Register** on October 15, 2010 (75 FR 63511).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the manufacture of pharmaceutical catalysts and active ingredients.

The investigation revealed that Zach System Corporation is a subdivision of Zambon Company, SPA, not Zach System SPA.

Based on these findings, the Department is amending this certification to correct the parent company name of the subject firm to read Zambon Company, SPA.

The amended notice applicable to TA–W–74,467 is hereby issued as follows:

All workers of Zach System Corporation, a subdivision of Zambon Company, SPA, including on-site leased workers of Turner Industries and Go Johnson, La Porte, Texas, who became totally or partially separated from employment on or after August 3, 2009, through October 1, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 23rd day of November 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30537 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,319]

General Motors Company Formerly Known as General Motors Corporation Willow Run Transmission Plant Including On-Site Leased Workers From Aerotek, Securitas, Knight Management, PLMSI, and ACRO, Ypsilanti, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on July 7, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant, Ypsilanti, Michigan. The notice was published in the **Federal Register** on July 26, 2010 (75 FR 43558). The notice was amended on July 30, 2010 to include on-site leased workers from Aerotek. The notice was published in the **Federal Register** on August 13, 2010 (75 FR 49527).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive transmissions and transmission components.

The company reports that workers leased from Securitas, Knight Management, PLMSI and Acro were employed on-site at the Ypsilanti, Michigan location of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant. The Department has determined that on-site workers from Securitas, Knight Management, PLMSI and Acro were sufficiently under the control of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Securitas, Knight Management, PLMSI and Acro working on-site at the Ypsilanti, Michigan location of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant.

The amended notice applicable to TA–W–72,319 is hereby issued as follows:

All workers of General Motors Company, formerly known as General Motors Corporation, Willow Run Transmission Plant, including on-site leased workers from Aerotek, Securitas, Knight Management, PLMSI, and Acro, Ypsilanti, Michigan, who became totally or partially separated from employment on or after September 14, 2008, through July 7, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30542 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,582]

General Motors Corporation, Powertrain Flint North, Including On-Site Leased Workers From Allegis Group Services, Securitas and Knight Management, Flint, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 2010, applicable to workers of General Motors Corporation, Powertrain Flint North, including on-site leased workers from Allegis Group Service, Flint, Michigan. The notice was published in the **Federal Register** on July 26, 2010 (75 FR 43558).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of component parts (transmission and engine components and deck and door locks).

The company reports that workers leased from Securitas and Knight Management were employed on-site at the Flint, Michigan location of General Motors Corporation, Powertrain Flint North. The Department has determined that these workers were sufficiently under the control of General Motors Corporation, Powertrain Flint North to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Securitas and Knight Management working on-site at the Flint, Michigan

location of General Motors Corporation, Powertrain Flint North.

The amended notice applicable to TA–W–72,582 is hereby issued as follows:

All workers of General Motors Corporation, Powertrain Flint North, including on-site leased workers from Allegis Group Services, Securitas and Knight Management Flint, Michigan, who became totally or partially separated from employment on or after October 2, 2008, through July 9, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Del Min Amy Chen.

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30544 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,628]

Di-Pro, Inc., a Subsidiary of Bendix-Spicer/Knorr-Bremse Bendix-Spicer Foundation Brake Including On-Site Leased Workers From Select, Act-1 and Pridestaff Fresno, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 8, 2010, applicable to workers of Di-Pro, Inc., a subsidiary of Bendix-Spicer/Knorr-Bremse, including on-site leased workers from Select, Fresno, California. The notice was published in the **Federal Register** on October 25, 2010 (75 FR 65520).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of brake chambers and spring brakes for braking systems on air braked trucks, tractors and semi-trailers.

The company reports that workers leased from Act-1 and PrideStaff were employed on-site at the Fresno, California location of Di-Pro, Inc. The Department has determined that these workers were sufficiently under the control of Di-Pro, Inc., a subsidiary of Bendix-Spicer/Knorr-Bremse, Bendix-Spicer Foundation Brake to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Act-1 and PrideStaff working on-site at the Fresno, California location of Di-Pro, Inc., a subsidiary of Bendix-Spicer/Knorr-Bremse, Bendix-Spicer Foundation Brake.

The amended notice applicable to TA–W–74,628 is hereby issued as follows:

All workers of Di-Pro, Inc., a subsidiary of Bendix-Spicer/Knorr-Bremse, Bendix-Spicer Foundation Brake, including on-site leased workers from Select, Act-1 and PrideStaff, Fresno, California, who became totally or partially separated from employment on or after September 9, 2009, through October 8, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30549 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,185]

LF USA, Inc., a Subsidiary of Li & Fung Limited, Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Wear Me Apparel LLC, Including On-Site Leased Workers From Winston Staffing, Laurinburg, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 2010, applicable to workers of LF USA, Inc., a subsidiary of Li & Fung Limited, including on-site leased workers from Winston Staffing, New York, New York. The notice was published in the **Federal Register** on September 15, 2010 (75 FR 56143). Workers are engaged in employment related to the supply of wholesale, clothing design, business administration, and information technology support services.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name Wear Me Apparel LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services to Hong Kong.

The amended notice applicable to TA–W–74,185 is hereby issued as follows:

All workers of LF USA, Inc., a subsidiary of Li & Fung Limited, including workers whose unemployment insurance (UI) wages are reported through Wear Me Apparel LLC, including on-site leased workers from Winston Staffing, New York, New York, who became totally or partially separated from employment on or after May 21, 2009, through August 27, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30548 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,310]

Optera, Inc. Formerly Known as Donnelly Corporation/Magna Donnelly Including On-Site Leased Workers From Manpower and Key Personnel Holland, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 2010, applicable to workers of Optera, Inc., including on-site leased workers from

Manpower and Key Personnel, Holland, Michigan. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of touch screen sensors.

New information shows that Optera, Inc. was formerly known as Donnelly Corporation/Magna Donnelly. Some workers separated from employment at Optera, Inc. had their wages reported under a separate unemployment insurance (UI) tax account under the name Donnelly Corporation/Magna Donnelly.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of touch screen sensors to China.

The amended notice applicable to TA–W–73,310 is hereby issued as follows:

All workers of Optera, Inc., formerly known as Donnelly Corporation/Magna Donnelly, including on-site leased workers from Manpower and Key Personnel, Holland, Michigan, who became totally or partially separated from employment on or after January 18, 2009, through February 26, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30547 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,303]

Weyerhaeuser Company Corporate Headquarters Including On-Site Leased Workers From Volt Services, Adecco, Manpower and Express Personnel Federal Way, Washington; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 2, 2010, applicable to workers of Weyerhaeuser Company, Corporate Headquarters, including on-site leased workers from Volt Services, Adecco, and Manpower, Federal Way, Washington. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34177).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers supply corporate and administrative services for the firm.

The company reports that workers leased from Express Personnel were employed on-site at the Federal Way, Washington location of Weyerhaeuser Company, Corporate Headquarters. The Department has determined that these workers were sufficiently under the control of Weyerhaeuser Company, Corporate Headquarters to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Express Personnel working on-site at the Federal Way, Washington location of Weyerhaeuser Company, Corporate Headquarters.

The amended notice applicable to TA–W–73,303 is hereby issued as follows:

All workers of Weyerhaeuser Company, Corporate Headquarters, including on-site leased workers from Volt Services, Adecco, Manpower, and Express Personnel, Federal Way, Washington, who became totally or partially separated from employment on or after January 7, 2009, through June 2, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30546 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,575]

Dell Products LP, Winston-Salem (WS–1) Division, Including On-Site Leased Workers From Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN, ICONMA, Staffing Solutions, South East, Omni Resources and Recovery, SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., and Seaton Corporation, Winston-Salem, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 2010, applicable to workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers from Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN and ICONMA, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361). The notices were amended on March 30, 2010 and August 31, 2010 to include on-site leased workers from Staffing Solutions, South East, and Omni Resources and Recovery. The notices were published in the **Federal Register** on April 19, 2010 (75 FR 20385) and September 13, 2010 (75 FR 55614), respectively. At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of desktop computers.

New information shows that workers leased from SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., and Seaton Corporation were employed on-site at the Winston-Salem, North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division. The Department has determined that on-site workers from SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, and ARM Automation, Inc. were sufficiently under the control of the subject firm to be covered by this certification.

Based on these findings, the Department is amending this certification to include workers leased from SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM

Automation, Inc., and Seaton Corporation working on-site at the Winston-Salem, North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division.

The amended notice applicable to TA–W–72,575 is hereby issued as follows:

All workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers of Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN, ICONMA, Staffing Solutions, South East, Omni Resources and Recovery, SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., and Seaton Corporation, Winston-Salem, North Carolina, who became totally or partially separated from employment on or after October 13, 2008 through March 1, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of November 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–30543 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,784]

Chrysler Group LLC Formerly Known as Chrysler LLC Kenosha Engine Plant Including On-Site Leased Workers From Caravan Knight Facilities Management LLC, Syncreon, Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, Crassociates, Inc., CES, Inc., Evans Distribution Systems, Prodriver Leasing Systems, Inc., Teksystems, Inc., and Arcadis Kenosha, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 13, 2010, applicable to workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant, Kenosha, Wisconsin (subject firm). The Department's notice of determination was published in the **Federal Register** on November 5, 2009 (74 57340). The certification applicable to workers of the subject firm was amended May 10, 2010 to include on-site leased workers from Caravan Knight Facilities Management and on August 13, 2010 to include on-site leased workers from Syncreon. The Department's notices of amended certification were published in the **Federal Register** on June 16, 2010 (75 FR 34170) and August 30, 2010 (75 FR 52982), respectively.

The workers at the subject firm were engaged in employment related to the production of V–6 automobile engines.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from not only Caravan Knight Facilities Management LLC and Syncreon, but also Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, CRAssociates, Inc., CES, Inc., Evans Distribution Systems, ProDriver Leasing Systems, Inc., Teksystems, Inc., and Arcadis, Kenosha, Wisconsin were employed on-site at the Kenosha, Wisconsin location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, CRAssociates, Inc., CES, Inc., Evans Distribution Systems, ProDriver Leasing Systems, Inc., Teksystems, Inc., and Arcadis working on-site at the Kenosha, Wisconsin location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant.

The amended notice applicable to TA–W–70,784 is hereby issued as follows:

All workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant, including on-site leased workers of Caravan Knight Facilities Management LLC, Syncreon, Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, CRAssociates, Inc., CES, Inc., Evans Distribution Systems, ProDriver Leasing Systems, Inc., Teksystems, Inc., and Arcadis, Kenosha, Wisconsin, who became totally or partially separated from employment on or after May 27, 2008, through September 2, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30540 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0364]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to Section 189a(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission, NRC, or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board (the Board) Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital

identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive an ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: July 27, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed license amendment request includes three parts: (1) The proposed Fermi 2 Cyber Security Plan, (2) an Implementation Schedule, and (3) a proposed sentence to be added to the existing Facility Operating License Physical Protection license condition to require Fermi 2 to fully implement and maintain in effect all provisions of the Commission approved Cyber Security Plan as required by Title 10 of the *Code*

of Federal Regulations (10 CFR) Section 73.54.

A **Federal Register** notice on March 27, 2009 (74 FR 13926), issued the final rule that amended 10 CFR part 73. The regulations in 10 CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a cyber security program. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under 10 CFR part 50 to submit a cyber security plan that satisfies the requirements of the Rule. Each submittal must include a proposed implementation schedule and implementation of the licensee's cyber security program must be consistent with approved schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. The Cyber Security Plan itself does not require any plant modifications. Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are implemented in order to identify, evaluate, and mitigate cyber attacks up to and including the design basis threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The proposed change requiring the implementation and maintenance of a Cyber Security Plan does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated.

Therefore, the inclusion of the Cyber Security Plan as a part of the facility's other physical protection programs specified in the facility's operating license has no impact on the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. The creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of the plant's configuration, including changes in the allowable modes of operation. Issuance of the Cyber Security Plan itself does not require any modifications; however, implementation of the plan will require future modifications. The Cyber Security Plan does not affect the control parameters governing unit operation or the response of plant equipment to a transient condition. Because the proposed change does not change or introduce any new equipment, modes of system operation, or failure mechanisms, no new accident precursors are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety limits specified in the Technical Specifications. Because the Cyber Security Plan does not alter the operation of plant equipment, the proposed change does not change established safety margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David G. Pettinari, Attorney—Corporate Matters, 688 WCB, Detroit Edison Company, One Energy Plaza, Detroit, Michigan 48226.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Operations, Inc. (ENO), Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: July 26, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment includes three parts: The proposed PNP Cyber Security Plan, an implementation schedule, and a proposed sentence to be added to the Renewed Facility Operating License Physical Protection license condition for ENO to fully implement and maintain in effect all provisions of the Commission-approved PNP Cyber Security Plan as required by Title 10 of the Code of Federal Regulations (10 CFR) Section 73.54. **Federal Register** notice dated March 27, 2009 (74 FR 13926), issued the final rule that amended 10 CFR Part 73. The regulations in 10 CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a Cyber Security Program. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under part 50 to submit a Cyber Security Plan that satisfies the requirements of the Rule. The regulation also requires that each submittal include a proposed implementation schedule, and the implementation of the licensee's Cyber Security Program must be consistent with the approved schedule. The background for this application is addressed by the NRC's Notice of Availability, published on March 27, 2009 (74 FR 13926).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

As required by 10 CFR 73.54 ENO has submitted a Cyber Security Plan for NRC review and approval for PNP. The PNP Cyber Security Plan does not alter accident analysis assumptions, add any initiators, or affect the function of the plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The PNP Cyber Security Plan does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to

mitigate the consequences of postulated accidents. The PNP Cyber Security Plan is designed to achieve high assurance that the systems within the scope of the 10 CFR 73.54 Rule are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated.

The second part of the proposed change is an implementation schedule, and the third part adds a sentence to the Renewed Facility Operating License for Physical Protection. Both of these changes are administrative in nature and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As required by 10 CFR 73.54 ENO has submitted a Cyber Security Plan for NRC review and approval for PNP. The PNP Cyber Security Plan does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The PNP Cyber Security Plan does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents. The PNP Cyber Security Plan is designed to achieve high assurance that the systems within the scope of the 10 CFR 73.54 Rule are protected from cyber attacks and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The second part of the proposed change is an implementation schedule, and the third part adds a sentence to the Renewed Facility Operating License condition for Physical Protection. Both of these changes are administrative in nature and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

As required by 10 CFR 73.54 ENO has submitted a Cyber Security Plan for NRC review and approval for PNP. Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the Technical Specifications. Because there is no change to these established safety margins as result of the implementation of the PNP Cyber Security Plan, the proposed change does not involve a significant reduction in a margin of safety.

The second part of the proposed change is an implementation schedule, and the third part adds a sentence to the Renewed Facility Operating License condition for Physical Protection. Both of these changes are administrative in nature and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Florida Power and Light Company, et al., Docket Nos. 50–250 and 50–251, Turkey Point, Units 3 and 4, Florida City, Florida

Date of amendment request: July 28, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment includes three parts: The proposed Turkey Point Nuclear Generating Station Cyber Security Plan, an Implementation Schedule, and a proposed sentence to be added to the existing renewed facility operating licenses Physical Protection license condition to require Florida Power and Light Company to fully implement and maintain in effect all provisions of the Commission approved cyber security plan as required by amended 10 CFR Part 73. The proposed Cyber Security Plan was submitted in accordance with Title 10 of the *Code of Federal Regulations,* Section 73.54, "Protection of digital computer and communication systems and networks."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment incorporates a new requirement in the Facility Operating License to implement and maintain a Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the Facility Operating License itself does not involve any modifications to the safety-related structures, systems or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The Cyber Security Plan will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the Facility Operating License do not result in the need for any new or different FSAR design basis accident analysis, and no new equipment failure modes are created. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power and Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Douglas A. Broaddus.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: November 23, 2009, as supplemented on December 18, 2009, July 23, 2010, and October 1, 2010 (TS–470).

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The **Federal Register** notice on March 27, 2009 (74 FR 13926), issued the final rule that amended Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical Protection of Plants and Materials." Specifically, the regulations in 10 CFR 73.54, "Protection of digital computer and communication systems and networks," establish the requirements for a cyber security program to protect digital computer and communication systems and networks against cyber attacks. The proposed amendment includes the proposed Cyber Security Plan, its implementation schedule, and a revised Physical Protection license condition for Browns Ferry Nuclear Plant, Units 1, 2, and 3, to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan as required by 10 CFR 73.54.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Neither the proposed additional license condition nor the Cyber Security Plan directly impacts the physical configuration or function of plant structures, systems, or components (SSCs). Likewise, they do not change the manner in which SSCs are operated, maintained, modified, tested, or inspected. Neither the proposed additional license condition nor the Cyber Security Plan introduces any initiator of any accident previously evaluated. Any modifications to the physical configuration or function of SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected that might result from the implementation of the Cyber Security Plan will be fully evaluated by existing regulatory processes (e.g., 10 CFR 50.59) prior to their implementation to ensure that they do not result in the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

This proposed amendment is intended to provide high assurance that safety-related SSCs are protected from cyber attacks. Inclusion of the additional condition in the Facility Operating License to implement the Cyber Security Plan does not directly alter the plant configuration, require new plant equipment to be installed, alter or create new accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety

The proposed amendment does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Adding a license condition to require implementation of Cyber Security Plan will not reduce a margin of safety because the requirements of the Plan are designed to provide high assurance that safety-related SSCs are protected from cyber attacks.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 23, 2009, as supplemented on December 11, 2009, December 18, 2009, July 23, 2010, and October 1, 2010 (TS 09–06).

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The **Federal Register** notice on March 27, 2009 (74 FR 13926), issued the final rule that amended Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical Protection of Plants and Materials." Specifically, the regulations in 10 CFR 73.54, "Protection of digital computer and communication systems and networks" establish the requirements for a cyber security program to protect digital computer and communication systems and networks against cyber attacks. The proposed amendment includes the proposed Cyber Security Plan, its implementation schedule, and a revised Physical Protection license condition for Sequoyah Nuclear Plant, Units 1 and 2, to fully implement and maintain in effect all provisions of the NRC-approved Cyber Security Plan as required by 10 CFR 73.54.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Neither the proposed additional license condition nor the Cyber Security Plan directly impacts the physical configuration or function of plant structures, systems, or components (SSCs). Likewise, they do not change the manner in which SSCs are operated, maintained, modified, tested, or inspected. Neither the proposed additional license condition nor the Cyber Security Plan introduces any initiator of any accident previously evaluated. Any modifications to the physical configuration or function of SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected that might result from the implementation of the Cyber Security Plan will be fully evaluated by existing regulatory processes (e.g., 10 CFR 50.59) prior to their implementation to ensure that they do not result in the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

This proposed amendment is intended to provide high assurance that safety-related SSCs are protected from cyber attacks. Inclusion of the additional condition in the Facility Operating License to implement the Cyber Security Plan does not directly alter

the plant configuration, require new plant equipment to be installed, alter or create new accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety

The proposed amendment does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Adding a license condition to require implementation of Cyber Security Plan will not reduce a margin of safety because the requirements of the Plan are designed to provide high assurance that safety-related SSCs are protected from cyber attacks.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station (NAPS), Units 1 and 2, Louisa County, Virginia

Date of amendment request: July 12, 2010, as supplemented by a letter dated August 5, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The licensee proposed an amendment to the Facility Operating Licenses (FOL) for NAPS Units 1 and 2. In the same amendment request letter, sent under Dominion Resources Services, Inc., letterhead, Millstone Power Station Units 2 and 3; Kewaunee Power Station; and Surry Units 1 and 2, submitted amendment requests pertaining to their Cyber Security Plans. This notice only addresses the application as it pertains to NAPS Units 1 and 2. The licensee requested NRC approval of the NAPS Units 1 and 2 Cyber Security Plan, provided a proposed implementation schedule, and proposed to add a sentence to License Condition 2.E, "Physical Protection," of NAPS Units 1 and 2, Facility Operating License NPF–4 and NPF–7 that would affirm when the licensee would fully implement and maintain in effect all provisions of the Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's NSHC analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Plan establishes the licensing basis for the Cyber Security Program for the sites. The Plan establishes how to achieve high assurance that specified nuclear power plant digital computer and communication systems, networks and functions are adequately protected against cyber attacks up to and including the design basis threat.

Part one of the proposed changes is designed to achieve high assurance that the systems are protected from cyber attacks. The Plan describes how plant modifications that involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the requirement are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated. The proposed change implements a Cyber Security Plan as a requirement not previously formally addressed. As such, the proposed Plan provides a significant enhancement to cyber security where no requirement existed before.

The second part of the proposed changes adds a sentence to the existing facility license conditions for Physical Protection. These changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related structures, systems and components (SSCs) are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need of any new or different design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station (Surry), Units 1 and 2, Surry County, Virginia

Date of amendment request: July 12, 2010, as supplemented by a letter dated August 5, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards

information (SUNSI). The licensee proposed an amendment to the Facility Operating Licenses (FOL) for Surry Units 1 and 2. In the same amendment request letter, sent under Dominion Resources Services, Inc., letterhead, Millstone Power Station Units 2 and 3; Kewaunee Power Station; and Surry Units 1 and 2, and North Anna Units 1 and 2, submitted amendment requests pertaining to their Cyber Security Plans. This notice only addresses the application as it pertains to Surry Units 1 and 2. The licensee requested NRC approval of the Surry Units 1 and 2 Cyber Security Plan, provided a proposed implementation schedule, and proposed to add a sentence to License Condition 3.J, "Physical Protection," of Surry Units 1 and 2, Facility Operating License DPR–32 and DPR–37 that would affirm when the licensee would fully implement and maintain in effect all provisions of the Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's NSHC analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Plan establishes the licensing basis for the Cyber Security Program for the sites. The Plan establishes how to achieve high assurance that specified nuclear power plant digital computer and communication systems, networks and functions are adequately protected against cyber attacks up to and including the design basis threat.

Part one of the proposed changes is designed to achieve high assurance that the systems are protected from cyber attacks. The Plan describes how plant modifications that involve digital computer systems are reviewed to provide high assurance of adequate protection against cyber attacks, up to and including the design basis threat. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The first part of the proposed change is designed to achieve high assurance that the systems within the scope of the requirement are protected from cyber attacks and has no impact on the probability or consequences of an accident previously evaluated. The proposed change implements a Cyber Security Plan as a requirement not previously formally addressed. As such, the proposed Plan provides a significant enhancement to cyber security where no requirement existed before.

The second part of the proposed changes adds a sentence to the existing facility license conditions for Physical Protection. These changes are administrative and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related structures, systems and components (SSCs) are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need of any new or different design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Florida Power and Light Company, et al., Docket Nos. 50–250 and 50–251, Turkey Point, Units 3 and 4, Florida City, Florida

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under Title 10 of the Code of Federal Regulations (10 CFR) 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission (NRC or the Commission), Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001.

The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 1st day of December 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E–Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/Activity
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–30481 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08502, 040–09073, 030–38260; NRC–2010–0300]

Notice of the Nuclear Regulatory Commission Consent to Indirect Change of Control and Issuance of License Amendment to Materials License SUA–1341, SUA–1596, and 49–29384–01

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of approval of indirect change of control and issuance of license amendment.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Project Manager, Uranium Recovery Licensing Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 415–7777; *fax number:* (301) 415–5369; *e-mail: ron.linton@nrc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of NRC consent to the indirect change of control and issuance of license amendments to Materials License Numbers SUA–1341, SUA–1569, and 49–29384–01. Materials License SUA–1341 authorizes Uranium One USA, Inc., to possess uranium and byproduct material at its Irigaray and Christensen Ranch in situ recovery (ISR) project in Johnson and Campbell Counties, Wyoming. The project is currently in operating status, but is not producing uranium at this time. Materials License SUA–1569 authorizes Uranium One Americas, Inc., to possess uranium and byproduct material at its Moore Ranch ISR Project in Campbell County, Wyoming. The project was licensed on September 30, 2010, and is not producing uranium at this time. Materials License 49–29384–01 authorizes Uranium One Americas, Inc. to possess byproduct material—specifically, sealed source of hydrogen-3—in an amount not to exceed three (3) Curies (Ci) per source and 12 Ci in total for well logging.

By letter dated July 20, 2010, Uranium One, Inc., Uranium One USA, Inc. and Uranium One Americas, Inc. (collectively, "Uranium One") submitted an application and license amendment request for approval of an indirect change of control of Uranium One USA, Inc.'s Materials License SUA–1341 for its Irigaray and Christensen Ranch Project (Agencywide Documents Access and Management System (ADAMS) accession number ML102090404). The July 20, 2010 submittal also referenced Uranium One's materials license applications for Moore Ranch Project (Docket No. 40–9073), Jab & Antelope Project (Docket No. 40–9079), and the Ludeman Project (Docket No. 40–9095) as being affected by the change of control. Subsequently, Materials License SUA–1596 was issued to Uranium One Americas, Inc. for its Moore Ranch Project on September 30, 2010. In a separate submittal dated June 23, 2010 (ML102100530), Uranium One submitted notification of an indirect change of control regarding its Materials License 49–29384–01. NRC has determined that the application constitutes a request for a license transfer and is collectively treating the July 20, 2010, and June 23, 2010, submittals as an application for the change of control of NRC licenses SUA–1341, SUA–1596 and 49–29384–01.

The indirect change of control is a result of a share purchase transaction, wherein JSC Atomredmetzoloto (ARMZ) (a Russian corporation) and its wholly owned subsidiaries Effective Energy N.V. (a Dutch limited liability company) and Uranium Mining Company (a Russian corporation), will acquire no less than 51 percent of Uranium One, Inc.'s (a Canadian Corporation) common shares. Uranium One, Inc. is the parent company of Uranium One USA, Inc. (a Delaware corporation) and Uranium One Americas, Inc. (a Nevada corporation), both NRC licensees. ARMZ is owned by JSC Atomenergoprom and JSC Atomenergoprom's wholly owned subsidiary JSC TVEL. JSC Atomenergoprom is a wholly owned

subsidiary of the Russian State Atomic Energy Corporation JSC ROSATOM (Rosatom). Approval of the proposed transaction will result in an indirect change of control of the licenses from Uranium One to Rosatom.[1]

Notice of the application, and opportunity to request a hearing and submit comments for Materials License SUA–1341 and SUA–1596 was published in the **Federal Register** on September 20, 2010 (75 FR 57300) with a deadline for submitting a request for hearing of October 12, 2010, and a deadline for submitting comments of October 20, 2010. No requests for hearing were received; however, four comments were received. Notice of the application and opportunity to request a hearing for Materials License 49–29384–01 was published on the NRC's public webpage on October 1, 2010, with a deadline for submitting a request for hearing of November 30, 2010. While the deadline for requesting a hearing for Materials License 49–29384–01 has not expired, 10 CFR 2.1316 directs the staff to promptly issue approval or denial of transfer requests consistent with staff's finding in the Safety Evaluation Report (SER).

By Order dated November 23, 2010, NRC approved the indirect transfer of control of NRC Materials Licenses SUA–1341, SUA–1596, and 49–29384–01. The Order was accompanied by a Safety Evaluation Report (SER) documenting the basis for the NRC staff's approval and a license amendment for each of the affected licenses. These actions comply with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations.

FOR FURTHER INFORMATION CONTACT: In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," the details with respect to this action, including the SER and accompanying documentation, and license amendment, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1	Applicant's application, July 20, 2010	ML102090404
2	FEDERAL REGISTER Notice, Opportunity for Hearing, September 20, 2010	ML102630318
3	Applicant Response to Request for Additional Information, October 18, 2010	ML102940435
4	Request to Amend License No. 49–29384–01, June 23, 2010	ML102100530
5	Response to Request for Additional Information	ML102670746
6	NRC Letter approving change of control, November 23, 2010	ML103120152
7	NRC Order dated November 23, 2010	ML103120183
8	Materials License SUA–1341, Amendment 18, November 23, 2010	ML103120213
9	Materials License SUA–1596, Amendment 2, November 23, 2010	ML103120221
9	Materials License 49–29384–01, Amendment 01, November 24, 2010	ML103120342
10	NRC Safety Evaluation Report dated November 22, 2010	ML103120321

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 23rd day of November 2010.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–30638 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; NRC–2010–0324]

Northern States Power Company—Minnesota, Prairie Island Nuclear Generating Plant, Units 1 and 2; Exemption

1.0 Background

Northern States Power Company, a Minnesota corporation (NSPM, the licensee) is the holder of Facility Operating License Nos. DPR–42 and DPR–60, which authorize operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Goodhue County in Minnesota.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), § 50.12, "Specific exemptions," NSPM has, by letter dated November 24, 2009, as supplemented by letter dated May 26, 2010 (Agencywide Documents Access and Management System Accession Nos. ML093280883 and ML101480083, respectively), requested an exemption from 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," and appendix K to 10 CFR part 50, "ECCS Evaluation Models," (appendix K). The regulations in 10 CFR 50.46 contain acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumed the use of a zirconium alloy different than Optimized ZIRLO™. The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and Appendix K is needed to support the

[1] With respect to the remaining two pending license applications, Jab & Antelope Project (Docket No. 40–9079) and Ludeman Project (Docket No. 40–9095), as a license has yet to be issued, the July 20, 2010, submittal will be treated as a revision to the information regarding the corporate identity of the applicant that is contained in the respective license applications.

use of different fuel rod cladding material. Therefore, the licensee requested an exemption that would allow the use of Optimized ZIRLO™ fuel rod cladding at PINGP. The NRC staff will prepare a separate safety evaluation, fully addressing NSPM's application for a related license amendment.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at PINGP. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Westinghouse topical reports WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, "Optimized ZIRLO™," dated July 2006, contain the justification to use Optimized ZIRLO™ fuel rod cladding material in addition to Zircaloy-4 and ZIRLO™ (these topical reports are non-publicly available because they contain proprietary information). The NRC staff approved the use of these topical reports, subject to the conditions stated in the staff's safety evaluations for each. In these topical reports, Westinghouse evaluated the structural and material properties of Optimized ZIRLO™ and determined that the use of Optimized ZIRLO™ as cladding would have either no significant impact or would produce a reduction in corrosion or oxidation and a corresponding reduction in hydrogen pickup. Westinghouse also evaluated the impact of Optimized ZIRLO™ fuel cladding on the loss-of-coolant accident (LOCA) and non-LOCA accident analyses. The evaluations determined that the LOCA analyses for fuel with Optimized ZIRLO™ cladding complied with 10 CFR 50.46, and that there was a negligible difference in the non-LOCA analyses between fuel clad with standard ZIRLO™ and fuel clad with Optimized ZIRLO™.

The underlying purpose of 10 CFR Part 50, Appendix K, Section I.A.5, "Metal-Water Reaction Rate," is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K of 10 CFR part 50 requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. Westinghouse has shown in WCAP–12610–P–A that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the Optimized ZIRLO™ advanced alloy as a fuel cladding material.

The NRC-approved topical reports have demonstrated that predicted chemical, thermal, and mechanical characteristics of the Optimized ZIRLO™ alloy cladding are bounding for those approved for ZIRLO™ under anticipated operational occurrences and postulated accidents. Reload cores are required to be operated in accordance with the operating limits specified in the technical specifications and the core operating limits report.

Based on the above, no new accident precursors are created by using Optimized ZIRLO™; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety due to using Optimized ZIRLO™.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at PINGP. This change to the plant configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Optimized ZIRLO™, even though the evaluations above show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NSPM an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material, for the Prairie Island Nuclear Generating Plant, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as published in the **Federal Register** on October 14, 2010 (75 FR 63213).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of November, 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30653 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364; NRC–2009–0375]

Southern Nuclear Operating Company, Inc. Joseph M. Farley Nuclear Plant, Units 1 and 2; Exemption

1.0 Background

Southern Nuclear Operating Company, Inc. (SNC, the licensee), is the holder of Renewed Facility

Operating License Nos. NPF–2 and NPF–8, which authorizes operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 includes additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from three of these new requirements that, by its letters dated September 10 and October 5, 2010, SNC now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been implemented by the licensee by March 31, 2010.

Previously, by letters dated June 9, and July 31, 2009, SNC submitted a request for an exemption from the compliance date identified in 10 CFR 73.55 for the three requirements of 10 CFR 73.55 that are discussed above. The NRC staff reviewed the request and by letter dated August 27, 2009, granted an exemption to the March 31, 2010, compliance date for the specific requirements identified within the SNC exemption request until December 15, 2010, to afford additional time for the necessary security system upgrades.

Subsequently, by letters dated September 10 and October 5, 2010, the licensee submitted an additional request for an exemption to the compliance date identified in 10 CFR 73.55, in accordance with 10 CFR 73.5, "Specific exemptions." The new compliance date requested for the specific requirements identified within this exemption request is July 15, 2011.

The licensee's letters dated September 10, 2010 (NL–10–1676) and October 5, 2010 (NL–10–1908) contain security-related information and, accordingly, are not available to the public. A redacted version of the licensee's September 10, 2010, letter (NL–10–1795) is available at ADAMS Accession No. ML102560042. The licensee has requested a further exemption from the March 31, 2010, compliance date stating that a number of issues, including unforeseen growth in the amount of design work required, design product loss due to computer hardware failures, and weather-related construction delays, will present a significant challenge to timely completion of the project related to a specific requirement in 10 CFR part 73. Specifically, the request is to extend the compliance date for three specific requirements from the current March 31, 2010, deadline to July 15, 2011. Being granted this exemption for these items will allow the licensee to complete the modifications designed to update equipment and incorporate state-of-the-art technology to meet the noted regulatory requirement.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

An NRC approval of this exemption would; as noted above, allow an extension from March 31, 2010, to July 15, 2011, for the implementation date for three specific requirements of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission (SECY–08–0099, dated July 9, 2008), the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission as discussed in the June 4, 2009, letter.

FNP Schedule Exemption Request

The licensee provided detailed information in its letters dated September 10 and October 5, 2010, requesting an exemption. It describes a comprehensive plan to install equipment related to the requirements in the new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The submittals contain security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by July 15, 2011. The timeline provides dates indicating (1) When various phases of the project begin and end (*i.e.,* design, field construction), (2) outages scheduled for each unit, and (3) when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedular exemption for these limited

requirements, the licensee is required to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By July 15, 2011, SNC will be in full compliance with all the regulatory requirements of 10 CFR 73.55 for the FNP, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to July 15, 2011, with regard to three specific requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the FNP equipment installation is complete justifies extending the full compliance date with regard to the specific requirements of 10 CFR 73.55. The security measures, that SNC needs additional time to implement, are new requirements imposed by the March 27, 2009, amendments to 10 CFR 73.55, and is in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the requirement specified in the SNC letters dated September 10 and October 5, 2010, the licensee is required to be in full compliance by July 15, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 73135, dated November 29, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of December 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30650 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2010–0357]

Detroit Edison Company Fermi, Unit 2; Exemption

1.0 Background

Detroit Edison Company (DECo) is the licensee and holder of Facility Operating License No. NFP–43 issued for Fermi, Unit 2 (Fermi-2), located in Monroe County, Michigan. The licensee anticipates using rail to ship radioactive waste. From the licensee's experience with radioactive shipments from the decommissioning of Fermi-1, a permanently shutdown nuclear reactor facility located onsite, rail shipments typically take more than 20 days from the site to receipt acknowledgement from the disposal site. Each shipment with receipt notifications greater than 20 days requires a special investigation and report to the U.S. Nuclear Regulatory Commission (NRC or the Commission) which the licensee believes to be burdensome and unnecessary to meet the intent of the regulation.

2.0 Request/Action

In a letter to the Commission dated February 5, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100430349), DECo requested an exemption from the requirements in 10 CFR part 20, appendix G, section III.E, to investigate and file a report to the NRC if shipments of low-level radioactive waste are not acknowledged by the intended recipient within 20 days after transfer to the shipper. This exemption would extend the time period that can elapse during shipments of low-level radioactive waste before DECo is required to investigate and file a report to the NRC from 20 days to 35 days. The exemption would be applicable to rail and truck/rail mixed-mode shipments. The exemption request is based on an analysis of the historical data of low-level radioactive waste shipment times from the Fermi-1 site to the disposal site. This historical data is further described below and in the Environmental Assessment and Finding of No Significant Impact (75 FR 20867) that was published for the exemption which was granted in May 2010 for Enrico Fermi Atomic Power Plant Unit 1.

3.0 Discussion

The proposed action would grant an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste to 35 days.

Historical data derived from experience at Fermi-1 indicates that rail transportation time to waste disposal facilities almost always exceeds the 20-day reporting requirement. A review of the Fermi-1 data indicates that transportation time for shipments by rail or truck/rail took over 20 days on average. In addition, administrative processes at the disposal facilities and mail delivery times could add several additional days.

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer.

Therefore, the Commission concludes that there is no statutory prohibition on the issuance of the requested exemption and the Commission is authorized to grant the exemption by law.

The Commission acknowledges that, based on the shipment times to date from the Fermi-1 site to the disposal facility, the need to investigate and report on shipments that take longer than 20 days could result in an excessive administrative burden on the licensee. The Commission finds that the underlying purpose of the Appendix G timing provision at issue is to investigate a late shipment that may be lost, misdirected, or diverted. Furthermore, by extending the elapsed time for receipt acknowledgment to 35 days before requiring investigations and reporting, a reasonable upper limit on shipment duration (based on historical analysis) is still maintained if a breakdown of normal tracking systems were to occur. Consequently, the Commission finds that there is no hazard to life or property by extending

the investigation and reporting time for low-level radioactive waste shipments from 20 days to 35 days for rail and truck/rail mixed-mode shipments. Therefore, the Commission concludes that the underlying purpose of 10 CFR part 20, Appendix G, Section III.E will be met.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption requested by DECo in its letter dated February 5, 2010, is authorized by law and will not result in undue hazards to life or property. Therefore, the Commission hereby grants DECo an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste, as required by 10 CFR part 20, Appendix G, Section III.E, to 35 days.

Pursuant to 10 CFR 51.31, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** (FR) notice (75 FR 70707; November 18, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of November 2010.

For the U.S. Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30636 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–298; NRC–2008–0617]

Nebraska Public Power District Cooper Nuclear Station; Notice of Issuance of Renewed Facility Operating License No. DPR–46 for an Additional 20-Year Period and Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has issued renewed facility operating license No. DPR–46 to Nebraska Public Power District (NPPD), the operator of the Cooper Nuclear Station (CNS). Renewed facility operating license No. DPR–46 authorizes operation of CNS at reactor core power levels not in excess of 2419 megawatts thermal (830 megawatts electric), in accordance with the provisions of the CNS renewed license and its technical specifications.

The notice also serves as the record of decision for the renewal of facility operating license No. DPR–46, consistent with Title 10 of the Code of Federal Regulations 51.103 (10 CFR 51.103). As discussed in the final Supplemental Environmental Impact Statement (FSEIS) for CNS, dated July 2010, the Commission considered a range of reasonable alternatives that included generation from coal, natural gas, combination of alternatives, and the no action alternative. The factors considered in the record decision can be found in the FSEIS for CNS (Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 41).

CNS is a BWR located in Nemaha County, Nebraska. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on December 30, 2008.

For further details with respect to this action, *see:* (1) NPPD's license renewal application for CNS dated September 24, 2008, as supplemented by letters dated through August 30, 2010; (2) the Commission's safety evaluation report (NUREG–1944), published in October 2010; (3) the applicant's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 41), for CNS, published in July 2010. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License No. DPR–46, may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the CNS safety evaluation report (NUREG–1944) and the final environmental impact statement (NUREG–1437, Supplement 41) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (*http://www.ntis.gov*), 703–605–6000, or *Attention:* Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 29th day of November 2010.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–30647 Filed 12–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

DATE: Weeks of December 6, 13, 20, 27, 2010, January 3, 10, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 6, 2010

There are no meetings scheduled for the week of December 6, 2010.

Week of December 13, 2010—Tentative

Thursday, December 16, 2010

2 p.m. Briefing on Construction Reactor Oversight Program (cROP) (Public Meeting) (Contact: Aida Rivera-Varona, 301–415–4001)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 20, 2010—Tentative

Tuesday, December 21, 2010

9:30 a.m. Briefing on the Threat Environment Assessment (Closed—Ex. 1).

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

Week of December 27, 2010—Tentative

There are no meetings scheduled for the week of December 27, 2010.

Week of January 3, 2011—Tentative

There are no meetings scheduled for the week of January 3, 2011.

Week of January 10, 2011—Tentative

There are no meetings scheduled for the week of January 10, 2011.

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The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an *e-mail* to *darlene.wright@nrc.gov.*

Dated: December 2, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–30846 Filed 12–3–10; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice

Cancellation of December 9, 2010 Board Meeting

OPIC's Sunshine Act notice of its Board meeting was published in the **Federal Register** (Volume 75, Number 210, Page 67145) on November 1, 2010. There being no business to bring before the Board, the meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: December 3, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–30915 Filed 12–3–10; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, December 9, 2010 at 2 p.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Thursday, December 9, 2010 at 2 p.m. has been changed to Thursday, December 9, 2010 at 1 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 2, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30731 Filed 12–3–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63398; File No. SR–NYSEArca–2010–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Net Asset Value for the iShares® Gold Trust

November 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to represent that the iShares® Gold Trust ("Trust"), which is currently listed on the Exchange, will value the gold owned by the iShares Gold Trust on the basis of the London PM Fix instead of the COMEX settlement price for the spot month gold futures contract for purposes of calculating the net asset value of shares ("Shares") of the Trust. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The iShares® Gold Trust ("Trust") (formerly known as the iShares® COMEX Gold Trust) is currently listed on the Exchange [3] under NYSE Arca Equities Rule 8.201 (Commodity-Based Trust Shares).[4] The Trust was initially listed on the American Stock Exchange LLC (now known as NYSE Amex LLC ("NYSE Amex")).[5] According to the Trust's registration statement on Form S–3, filed with the Commission under the Securities Act of 1933,[6] the objective of the Trust is for the value of the Shares to reflect, at any given time, the price of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust) ("NYSE Arca Order").

[4] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[5] Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC) ("Amex Order"). Notice for SR–Amex–2004–38 was published in Securities Exchange Act Release No. 50792 (December 3, 2004) ("Amex Notice").

[6] 15 U.S.C. 77a.

gold owned by the Trust at that time less the Trust's expenses and liabilities.[7]

The sponsor of the Trust is BlackRock Asset Management International Inc., a Delaware corporation and an indirect subsidiary of BlackRock, Inc. The trustee is The Bank of New York Mellon ("Trustee") and JPMorgan Chase Bank, N.A., London branch, is the custodian for the Trust.

The Trust has determined to change the price benchmark which the Trust uses to value the gold that it owns from that described in the Amex Notice and referenced in the NYSE Arca Order. According to the Registration Statement, the net asset value ("NAV") of the Trust is obtained by subtracting the Trust's expenses and liabilities on any day from the value of the gold owned by the Trust on that day; the net asset value per Share, or NAV, is obtained by dividing the NAV of the Trust on a given day by the number of Shares outstanding on that date. On each day on which NYSE Arca is open for regular trading, the Trustee determines the NAV as promptly as practicable after 4 p.m. (Eastern time).

The Trustee currently values the Trust's gold on the basis of that day's COMEX settlement price for the spot month gold futures contract (the futures contract closest to maturity on that day). Going forward, the Trustee will value the Trust's gold on the basis of the London PM Fix.[8] The Commission previously has approved listing of Commodity-Based Trust Shares based on gold for which a trust's gold holdings are valued based on the London PM Fix.[9]

Apart from the price benchmark used for valuing the Trust's gold holdings, the representations made in the Amex Notice and Amex Order, and referenced in the NYSE Arca Order, continue to apply, except for the following: (1) The name of the Trust is changed; (2) the Trust's sponsor and custodian are changed; and (3) the Trust represents that it is exempt from the requirements of Rule 10A–3 under the Act pursuant to paragraph (c)(7) of that rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under 19b–4(f)(6)[16] normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As noted above,[18] the Commission has approved the listing and trading of other issues of Commodity-Based Trust Shares that are valued using the same methodology proposed for the Trust, and therefore believes that no significant purpose would be served by a 30-day operative delay. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[7] *See* the registration statement for the iShares® Gold Trust on Form S–3, filed with the Commission on June 28, 2010 (No. 333–167807) ("Registration Statement").

[8] On November 23, 2010, the Trust filed a Form 8–K with the Commission relating to the prospective change of the benchmark used to value the gold held by the Trust (File No. 001–32418), which is available on the Commission's Web site at *http://www.sec.gov* and on the Trust's Web site at *http://www.iShares.com.* Following the effectiveness of the proposed rule change, the Trust (1) will issue a press release informing the public of the date the Trust will first use the London PM Fix to value the gold held by the Trust; (2) will file the press release with the Commission by means of Form 8–K, which will be available on the Trust's Web site; and (3) will file an amendment to the Registration Statement on Form S–3 relating to the proposed change. *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated November 29, 2010.

[9] *See* Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 59895 (May 8, 2009) (order approving listing on the Exchange of ETFS Gold Trust). These proposed rule changes include descriptions of the London bullion market and the London AM and PM Fixes. In addition, these proposed rule changes, as well as the Amex Notice and Amex Order include descriptions of the OTC gold market generally and regulation of the gold market.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] *See supra* note 9 and accompanying text.

[19] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–105 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30574 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63400; File No. SR–OPRA–2010–04)

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment To Revise Section 4.04 of the Data Recipient Interface Specification and Section 4.15 of the Participant Interface Specification and Make Conforming Changes to Appendix D

November 30, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 thereunder,[2] notice is hereby given that on November 9, 2010, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[3] The proposed amendment would make identical changes to Section 4.04 of OPRA's Data Recipient Interface Specification and Section 4.15 of its Participant Interface Specification (both Specifications are collectively referred to herein as the "OPRA Spec"), which govern the format in which options market information is input to and disseminated from the OPRA Processor, in order to add message type codes specifying that either the bid side or the offer side, but not both sides, of a quotation is not firm. OPRA also proposes to make a conforming change to Appendix D of the OPRA Spec describing Best Bid and Offer (BBO) calculations. Sections 4.04 and 4.15 and Appendix D of the OPRA Spec, marked to show the changes proposed to be made, are attached as Exhibits 1.1, 1.2 and 1.3, respectively, to the OPRA Plan amendment.

The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The nine participants to the OPRA Plan are BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market LLC, NYSE Amex, Inc., and NYSE Arca, Inc.

I. Description and Purpose of the Plan Amendment

The purpose of this filing is to revise Sections 4.04 and 4.15 of the OPRA Spec, which set forth message type codes indicating the characteristics of particular disseminated options quotations, in order to add codes specifying that either the bid side or the offer side, but not both sides, of a quotation is not firm. Under Sections 4.04 and 4.15 as currently in effect, code "F" is appended to a quotation where both the bid side and the offer side are not firm. This code may be used, for example, where systems or communications problems at an exchange prevent that exchange from sending firm quotes to OPRA for dissemination, but where the exchange is capable of providing non-firm quotes to indicate some sense of its market notwithstanding its systems problems. Even if an exchange is not having systems problems, it might use code "F" to indicate that its quotes are not available for automatic execution because, for example, the quotes are disseminated outside of the hours when automatic execution facilities are in use. However, there are no codes in Sections 4.04 and 4.15 to indicate that one side of a quote is not firm while the other side is firm. This situation could arise, for example, when an exchange is in the process of collecting liquidity, either during an auction or when there is a price-driven integrity pause. In this situation, OPRA believes it would be more useful to OPRA subscribers if the affected exchange and OPRA could indicate that one side of a quote is firm and the other side is not firm rather than not displaying the quote at all or displaying it under the "F" code, which would incorrectly indicate that neither side of the quote is firm.

In the absence of a one-side only non-firm code, in accordance with the current OPRA Spec, exchanges have displayed a zero value for the price and size of that side of a quote that is not firm while showing the actual price and size of the firm side of the quote. This has proved to be a less than optimal solution because it does not provide a way to indicate that there is bid or offer interest even if it is not available for automatic execution at that time. Bidding or offering at zero price and zero size means that no offer side or no bid side interests exists, which may not correctly reflect the actual state of the market. For this reason, OPRA is now proposing to add to Sections 4.04 and 4.15 of the OPRA Spec two new codes:

"X" to indicate that the offer side of a quote is not firm while the bid side is firm, and "Y" to indicate that the bid side of a quote is not firm while the offer side is firm. The use of "X" and "Y" in these circumstances is similar to the use of "E" and "F" by the CQS network in respect of stock quotations (the letter "F" is already used by OPRA and thus is unavailable for this purpose), so the concept should be familiar to most OPRA subscribers.

Consistent with the addition of these two new codes to Sections 4.04 and 4.15, Appendix D of the OPRA Spec, which describes how options Best Bids and Offers (BBOs) are determined, is proposed to be revised to provide that when one side of a quote is indicated as not firm, that side will not be considered for the purpose of determining what is the BBO in the subject option, but the firm side of the quote will be so considered.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, *http://opradata.com,* and on the Commission's Web site at *http://www.sec.gov*.

II. Implementation of the OPRA Plan Amendment

OPRA designated this amendment as qualified to be put into effect upon filing with the Commission in accordance with clause (iii) of paragraph (b)(3) of Rule 608 under the Act [4] since the proposed changes to the Data Recipient Interface Specification and Participant Interface Specification are solely technical or ministerial in nature. OPRA intends to implement the revised OPRA Spec in late January or early February, 2011, when the necessary systems work is expected to be completed by OPRA's Processor. As required by OPRA's Vendor and Subscriber Agreements, OPRA will provide its Vendors and Subscribers with not less than sixty days notice of this change.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 608(b)(2) under the Act [5] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OPRA–2010–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OPRA–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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–OPRA–2010–04 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30575 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 242.608(b)(3)(iii).

[5] 17 CFR 242.608(b)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63403; File No. SR–BATS–2010–034]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Create a Directed Order Program

December 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 with the Commission a proposal for the BATS Exchange Options Market ("BATS Options") to create new BATS Rule 21.1(d)(13), entitled "Market Maker Price Improving Orders," create new BATS Rule 21.1(d)(14), entitled "Directed Orders," and amend existing BATS Rule 21.1(d)(2), entitled "Price Improving Orders."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing certain modifications and additions to its rules related to the trading of options. First, the Exchange is proposing the establishment of new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders. Second, the Exchange is proposing the establishment of new Rule 21.1(d)(14), entitled Directed Orders. Third, the Exchange is proposing to modify Rule 21.1(d)(6), entitled Price Improving Orders.

The Exchange is proposing the rule changes described below to establish a directed order program through which Options Members can direct an order to a particular BATS Options Market Maker for potential execution at a price improved over the existing National Best Bid ("NBB") or National Best Offer ("NBO"). As part of this program, BATS is proposing to define two new order types. The first would be new Rule 21.1(d)(13), entitled Market Maker Price Improving Orders, which are orders from a BATS Options Market Maker to buy or sell an option that has a displayed price and size and a non-displayed price at which the BATS Options Market Maker is willing to trade with a Directed Order. As proposed, a Market Maker Price Improving Order would be ranked on the BATS Options Book at its displayed price. The non-displayed price of the Market Maker Price Improving Order would not be entered into the BATS Options Book, but would be, along with its displayed size, converted to a buy or sell order at its non-displayed price in response to a Directed Order directed to the BATS Options Market Maker.

The second new order type proposed would be new Rule 21.1(d)(14), entitled Directed Orders, which are orders from a BATS Options Member that are directed for execution to a particular BATS Options Market Maker. For a BATS Options Market Maker to participate in an execution against a Directed Order, (1) the Directed Order must be from a BATS Options Member that is on a list of eligible Options Members provided to the Exchange by the BATS Options Market Maker, in a manner prescribed by the Exchange, (2) the BATS Options Market Maker must be publicly quoting on BATS at the NBB (for sell Directed Orders) or NBO (for buy Directed Orders) with a Market Maker Price Improving Order that contains a non-displayed amount of price improvement over the NBB or NBO at the time the Directed Order arrives to the Exchange, and (3) the Directed Order must be marketable against the non-displayed price of the Market Maker Price Improving Order.

If the above conditions are met, and if there are no other non-displayed orders at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, the Directed Order will trade with the Market Maker Price Improving Order up to the full size of the Market Maker Price Improving Order. Any remaining contracts from the Directed Order will be handled, consistent with the instructions on the Directed Order, in accordance with the order display and book processing requirements of Rule 21.8 and, if applicable, processed in accordance with the order routing requirements of Rule 21.9.

If there are non-displayed orders on the BATS Options Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order, those other non-displayed orders will in all cases have priority over the non-displayed price of the Market Maker Price Improving Order. In such circumstances, the Market Maker Price Improving Order may still execute at its non-displayed price against the Directed Order consistent with the price/time priority provisions of Rule 21.8 to the extent of any remaining contracts of the Directed Order. Any contracts remaining of the Directed Order will continue to be processed in a manner consistent with the order display and book processing provisions of Rule 21.8, and if applicable, the order routing provisions of Rule 21.9.

As proposed, an Options Market Maker Price Improving Order would be required to have a non-displayed price better than the displayed limit price that could be entered in an increment as small as (1) one cent or may be designated at the midpoint of the National Best Bid and Offer ("NBBO"). In addition, BATS is proposing to amend existing Rule 21.1(6), entitled Price Improving Orders, to provide all BATS Options Members with the ability to enter Price Improving Orders in an increment designated at the midpoint of the NBBO. Price Improving Orders will in all cases include a displayed price and a better, non-displayed price. Price Improving Orders with a non-displayed price designated at the midpoint of the NBBO will receive a new timestamp each time the non-displayed midpoint price automatically adjusts in response to changes in the NBBO and will be displayed at the NBBO at the time of entry. The displayed price will not subsequently adjust to changes in the NBBO. Price Improving Orders with a non-midpoint price will be displayed at the minimum price variation in that security and will be rounded up for sell orders and rounded down for buy orders.

Market Maker Price Improving Orders with a non-displayed price designated at the midpoint of the NBBO will not receive a new timestamp in response to changes in the NBBO. Unlike Price Improving Orders, the non-displayed price of a Market Maker Price Improving Order is not entered into the BATS Options Book, and is only eligible to trade with a Directed Order to the extent that certain conditions precedent are satisfied, including (1) that the displayed price of the Market Maker Price Improving Order is equal to the NBB (for sell directed orders) or the NBO (for buy directed orders) at the time the Directed Order arrives to the Exchange, and (2) that there are no other orders on the BATS Options Book at prices equal to or better than the non-displayed prices of the Market Maker Price Improving Order.[3]

The Exchange is also proposing to delete certain language from its existing Price Improving Order rule text. In particular, as currently written, Rule 21.1(d)(6) states that "Price Improving Orders *that are available for display* * * *."[4] The Exchange is proposing to delete the clause "that are available to display," which although intended to simply distinguish an order executed upon arrival to the Exchange from an order posting to the BATS Options Book, has the potential to cause confusion to the extent it may suggest that Price Improving Orders can be posted on the BATS Options Book without a displayed price. That is not the case today, would not be the case under the proposed changes to the rule, and BATS is proposing to delete this clause to eliminate any confusion on this point.

The elements of the Exchange's proposal to create a directed order program are specifically designed to enhance opportunities available in the market for Options Members to obtain price improvement for customer orders

[3] As described in proposed Rule 11.9(c)(13)(B), all other interest on the BATS Book at prices equal to or better than the non-displayed price of the Market Maker Price Improving Order has priority over the Market Maker Price Improving Order and, hence, will execute first against the Directed Order.

[4] Emphasis added.

in the context of BATS' price/time priority, continuous auction market. By requiring BATS Options Market Makers to be quoting at the NBB or NBO to participate in an execution against a Directed Order directed to it, BATS' proposal incentivizes market makers to competitively quote and thereby furthers the public price discovery process. By further requiring BATS Options Market Makers to include a non-displayed price better than the displayed limit price at an increment as small as (1) one cent or the midpoint of the NBBO, the proposal increases the opportunities for customer orders to receive price improvement over the NBBO. Moreover, by permitting all Options Members to enter orders in the same increments as Market Maker Price Improving Orders, including as proposed at the midpoint of the NBBO, and according those orders in all cases priority at their non-displayed prices over Market Maker Price Improving Orders, the proposal avoids creating participation guarantees in place at other markets and instead promotes market-wide competition for executions at prices between the NBBO.

Pursuant to the proposed directed order program, a BATS Options Member who notifies a BATS Options Market Maker of its intention to submit a Directed Order to BATS Options so that the BATS Options Market Maker could change its quotation to match the NBB or NBO immediately prior to submission of the Directed Order would be engaging in conduct inconsistent with just and equitable principles of trade in violation of Rule 3.1 and Rule 18.4(f). In addition, a BATS Options Market Maker who becomes aware of a customer order from an affiliated broker-dealer or desk within the same broker-dealer and acts on such information to change its quotations to match the NBB or NBO immediately prior to submission of a Directed Order would be in violation of the Exchange's Rule 22.10, "Limitations on Dealings". BATS will proactively conduct surveillance for such conduct and enforce against such violations.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed rule meets these requirements in that it promotes competition for customer orders and furthers the public price discovery process by both incentivizing BATS Options Market Makers to publicly display aggressive quotes at the NBBO, as well as incentivizing BATS Options Market Makers and all other BATS Options Members to post non-displayed prices better than the NBBO. BATS notes that the Commission has previously found consistent with the Act non-displayed order types designed to provide price improvement at prices smaller than the minimum price variation in listed options.[7] While those order types have to date been limited to permitting increments as small as (1) one cent, BATS notes that the Commission has previously found midpoint order types consistent with the Act in the equity markets,[8] and as the options market structure has converged with the equity market structure in recent years through expansion of the penny pilot as well as the implementation of Regulation NMS-like protections, BATS believes customers in the options markets would similarly benefit from the potential price improvement afforded by midpoint executions.

Moreover, the Commission has previously approved rules that provide specialist or market maker guarantees up to a certain percentage so long as the specialist or market maker is quoting at the NBBO and such guarantees do not rise to a level that could have a material adverse impact on quote competition with a particular exchange.[9] While BATS' directed order program requires BATS Options Market Makers to be quoting at the NBB or NBO to be eligible to trade with an incoming Directed Order directed to it, in contrast to prior rules approved by the Commission, BATS' proposed directed order program provides no participation guarantees that could negatively impact quote competition. By not providing such guarantees, BATS's proposed directed order program provides incentives to BATS Options Market Makers as well as all other BATS Options Members to aggressively quote, both at the NBBO and at non-displayed prices better than the NBBO.

In addition, the Commission has previously approved rules that permit a specialist or market maker to determine the firms from which it will accept directed or preferenced orders. The Commission has explicitly approved a process similar to that proposed by BATS in the equity markets in which only those members who have been permissioned by a market maker are eligible to submit directed orders to the market maker.[10] And, the Commission has implicitly approved such processes in the options markets by allowing certain price improvement auctions to exist pursuant to pilot programs, which auctions provide the ability of an options member to submit a customer order along with a contra-side principal order from the options member into a brief price improvement auction in which all members have the ability to compete for the execution.[11] BATS' proposed rule changes are similar in nature to these price improvement auctions, except that under BATS' proposal, competition for the execution with a Directed Order occurs in the context of BATS' continuous, price/time priority auction, and as previously mentioned, BATS Options Market Makers would have no participation guarantees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.,* BATS Options Rule 21.1(d)(6) "Price Improving Orders"; Nasdaq Options Market Rule Chapter VI, Section 1(e)(6) "Price Improving Orders".

[8] *See, e.g.,* BATS Rule 11.9(c)(9) "Mid-Point Peg Order".

[9] *See, e.g.,* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91) (order approving the establishment of a directed order process with certain specialist participation guarantees).

[10] *See* Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72193 (December 1, 2005) (SR–PCX–2005–56) (order approving certain modifications to the PCX Equities, Inc.'s Directed Order Process on the Archipelago Exchange).

[11] *See, e.g.,* BOX Rule Section 18 "The Price Improvement Period" and ISE Rule 723 "Price Improvement Mechanism for Crossing Transactions" (both of which providing a mechanism for options members that want to internalize customer orders the ability to do so on the exchanges subject to a requirement that such orders first be exposed to all other options members through a brief price improvement auction).

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 up to 90 days (i) as the Commission may designate 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2010–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2010–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR–BATS–2010–034 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30577 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63395; File No. SR–Phlx-2010–167]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement, on a Semi-Annual Basis, of Penny Pilot Issues that Have Been Delisted

November 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 22, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1034 (Minimum Increments) to: Extend through December 31, 2011, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"); and replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.[3]

The text of the proposed rule change is available on the Exchange's Website at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Phlx Rule 1034 to: (1) Extend through December 31, 2011, the Penny Pilot; and (2) replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on December 31, 2010, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust ("QQQQ"),® SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), however, are quoted

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007)(SR–Phlx–2006–74)(notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009)(SR–Phlx–2009–91)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009)(SR–Phlx–2009–94)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010)(SR–Phlx–2010–12)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010)(SR–Phlx–2010–65)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010)(SR–Phlx–2010–103)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

Commensurate with the extension of the Penny Pilot through 2011, the Exchange proposes to extend through 2011 the ability to replace on a semi-annual basis any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2011, and July 1, 2011.[4] The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2010 and ending November 30, 2010, for the January 2011 replacement, and the six month period beginning December 1, 2010 and ending May 31, 2011 for the July 2011 replacements.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of Phlx's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by extending the Penny Pilot.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)(iii) thereunder[9] 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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2010–167 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2010–167. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx-2010–167 and should be submitted on or before December 28, 2010.

[4] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's web site.

[5] *See* supra note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30580 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63396; File No. SR–NASDAQ–2010–150]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement, on a Semi-Annual Basis, of Penny Pilot Issues That Have Been Delisted

November 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on November 22, 2010, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to amend Chapter VI, Section 5 (Minimum Increments) to: Extend through December 31, 2011, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"); and replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.[3]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at Nasdaq'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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to: (1) Extend through December 31, 2011, the Penny Pilot; and (2) Replace, on a semi-annual basis, any Penny Pilot issues that have been delisted.

For a pilot period scheduled to expire on December 31, 2010, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust ("QQQQ")®, SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. Currently the Exchange trades 361 options classes pursuant to the Penny Pilot.

The Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

Commensurate with the extension of the Penny Pilot through 2011, the Exchange proposes to extend through 2011 the ability to replace on a semi-annual basis any Penny Pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2011, and July 1, 2011.[4] The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2010 and ending November 30, 2010, for the January 2011 replacement, and the six month period beginning December 1, 2010 and ending May 31, 2011 for the July 2011 replacements.[5]

In conjunction with this extension proposal, the Exchange agrees to submit a report to the Commission regarding the Penny Pilot that will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of NOM's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by extending the Penny Pilot.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers, and the Exchange has received numerous requests to expand and

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62617 (July 30, 2010), 75 FR 47670 (August 6, 2010) (SR–NASDAQ–2010–092) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[5] *See* supra note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

continue it. This proposal allows the Penny Pilot to continue in its current format for one year through December 31, 2011.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A);[8] of the Act and Rule 19b–4(f)(6)(iii) thereunder;[9] 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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–150 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–2010–150. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–150 and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30579 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63402; File No. SR–Phlx–2010–168]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

December 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to remove an option from the Exchange's Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I of the Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in the Exchange's Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I of the Fee Schedule. Specifically, the Exchange is proposing to remove Ambac Financial Group, Inc. ("ABK") from the list of Select Symbols as the Exchange delisted this option on November 9, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(4) of the Act [4] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the removal of ABK from the Select Symbols is both equitable and reasonable because it will apply to all categories of participants in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and paragraph (f)(2) of Rule 19b–4 [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–168 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–168. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–168, and should be submitted on or before December 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–30576 Filed 12–6–10; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2004–16951]

Agency Information Collection Activities; Request for Comments; Renewed Approval of Information Collection: Aircraft Liability Insurance

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the U.S. Department of Transportation's (DOT) intention to request renewal of a previously approved information collection.

DATES: Written comments should be submitted by February 7, 2011.

ADDRESSES: You may submit comments [identified by Docket Number DOT–OST–2004–16951] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Chief, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U. S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION: *Title:* Aircraft Accident Liability Insurance, 14 CFR part 205.

OMB Control Number: 2106–0030.

Type of Request: Renewal of a previously approved collection.

Abstract: 14 CFR part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 5,308.

Estimated Total Burden on Respondents: 6,900 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on November 30, 2010.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. 2010–30637 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Maintenance, Preventative Maintenance, Rebuilding and Alteration

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. FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform major alterations and major repairs. 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. Comments were received on the frequency of the collection reported in that notice, which has been revised in this notice to read that information is collected "as needed." Other comments were received regarding the annual burden reported on the previous notice. The estimated average burden per response has been revised in this notice, and the annual hourly burden has also been recalculated and revised for better accuracy.

DATES: Written comments should be submitted by January 6, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0020.

Title: Maintenance, Preventative Maintenance, Rebuilding and Alteration.

Form Numbers: FAA Form 337.

Type of Review: Renewal of an information collection.

Background: FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform major alterations and major repairs. The information collection associated with FAR 43 is necessary to ensure that maintenance, rebuilding, or alteration of aircraft, aircraft components, etc., is performed by qualified individuals and at proper intervals. Further, proper maintenance records are essential to ensure that an aircraft is properly maintained and is mechanically safe for flight.

Respondents: An estimated 87,769 certified mechanics, repair stations, and air carriers authorized to perform maintenance.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 30 minutes to one hour per response.

Estimated Total Annual Burden: 34,125 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 December 1, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–30602 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Naples Municipal Airport, Naples, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Naples Airport Authority for Naples Municipal Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is November 23, 2010.

FOR FURTHER INFORMATION CONTACT: W. Dean Stringer, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407–812–6331, Extension 117.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Naples Municipal Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) part 150, effective November 23, 2010. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an

airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Naples Airport Authority. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of 14 CFR part 150 includes: Figure 43, "2010 Existing Conditions Noise Exposure Map; Figure 44, "2015 Five-Year Forecast Conditions Noise Exposure Map"; Figure 11, p. 31 and Figures 50–55 on pp. 124–134 are at required scale in supplemental fold-out map entitled "Consolidated Modeling Flight Tracks"; Section 5.6, pp. 110–134; Section 3.1.2, pp 30–34; Section 2.4, pp. 23–27; Section 5.5, pp. 108; Table 2, p. 26; Section 5.5, p. 108; Table 7, p. 109. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on November 23, 2010.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida on November 23, 2010.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 2010–30588 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–56]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before December 17, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1086 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka L. Thomas, 202–267–7626, or Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 2, 2010.

Dennis Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–1086.

Petitioner: RLB Aviation, Inc. d.b.a. Starfighters, Inc.

Section of 14 CFR Affected: § 91.139(a).

Description of Relief Sought: RLB Aviation, Inc. d.b.a. Starfighters, Inc. (Starfighters), requests an exemption from § 91.319(a) to allow Starfighters to carry persons and property for compensation or hire in experimental aircraft.

[FR Doc. 2010–30649 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2011, Through December 31, 2011

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2011, through December 31, 2011, will remain at 25 percent of safety-sensitive employees for random drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Kearns, Office of Aerospace Medicine, Drug Abatement Division, Program Administration Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue, SW., Room 806, Washington, DC 20591; Telephone (202) 267–8442.

Discussion: Pursuant to 14 CFR 120.109(b), the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2009, the random drug test positive rate was 0.534%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2011.

Similarly, 14 CFR 120.217(c), requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2009, the random alcohol test violation rate was 0.088%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2011.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14, section 120.109(b) (for drug testing), and 120.217(c) (for alcohol testing).

Issued in Washington, DC, on December 1, 2010.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2010–30659 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Docket Number FRA–2010–0154

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system as detailed below.

Applicant: Massachusetts Bay Commuter Railroad Company: Mr. John B. Mitchell, Deputy Chief of Engineering Operations, Massachusetts Bay Commuter Railroad Company, 32 Cobble Hill Road—Suite 3, Somerville, MA 02143–4431.

The Massachusetts Bay Commuter Railroad Company (MBCR) seeks approval of the proposed modification of the signal system on the Fitchburg Commuter Rail Line from milepost (MP) 1.4 Swift Interlocking, in Sommerville, Massachusetts, to but not including MP 25.6 CP—Martin St., in Acton, MA. By contract with the owner, the Massachusetts Bay Transportation Authority (MBTA), and in conjunction with the Small Starts American Recovery and Rehabilitation Act (ARRA), MBCR will be installing electronic track circuits on both tracks 1 and 2 to facilitate a bi-directional operation. New interlockings will be installed at MP 6, Horgan; MP 9, Beaver Brook; MP 10, Moody; MP 18, Hills; and MP 25, Maynard Junction. All interlockings will be equipped with colorlight LED type signal heads and electric switch machines.

The interlockings at West Cambridge, Hill Crossing, and Clematis Brook will be retired and South Acton will become Maynard Junction. The mechanical bed-locking interlocking machine at Waltham Tower will be retired. Twenty-six existing automatic searchlight style signals will be retired, with twenty new automatic signals installed. The proposed modifications will retire a signal system comprised of dc neutral, mechanical, and searchlight type relays, and traffic control circuitry that operates via line wire and cable. Control of the territory will be transferred into the Commuter Rail Operations Control Center in Somerville, MA. This project is part of several projects designed to decrease passenger train trip time between Fitchburg, and Boston, MA.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket No. FRA–2010–0154) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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, and labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on December 1, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–30533 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

American Short Line and Regional Railroad Association

[Waiver Petition Docket Number FRA–2009–0078]

In response to the American Short Line and Regional Railroad Association's (ASLRRA) July 16, 2009, petition in this docket, FRA granted certain identified ASLRRA member railroads limited conditional relief from the Federal hours of service law (HSL; 49 U.S.C. Chapter 211). Specifically, FRA granted the identified ASLRRA member railroads listed on ASLRRA's "Seconded Amended Exhibit A" in this docket relief from 49 U.S.C. 21103(a)(4)(A). (*See* FRA letter dated March 5, 2010, document number—0008.1 in the docket). Section 21103(a)(4)(A) mandates that train employees have 48 or 72-hour off-duty periods following the initiation of on-duty periods on either 6 or 7 consecutive days.

On September 1, 2010, ASLRRA filed a motion to amend its petition in this docket to: (1) Add and withdraw participating railroads, and (2) expand the scope of the waiver granted in FRA's initial decision. ASLRRA included with its September 1, 2010, motion, evidence that the applicable labor organizations or affected employees of each listed railroad concur with the request for relief.

By a letter dated October 15, 2010, FRA denied ASLRRA's request to expand the scope of the relief granted, but reserved decision on the request to make additional ASLRRA member railroads party to the waiver, pending the solicitation of public comment on that aspect of ASLRRA's request. (*See* FRA letter dated October 15, 2010, document number 0085.1 in the docket). This notice solicits public comment on ASLRRA's request to make the nineteen additional railroads identified in its September 1, 2010, motion parties to the waiver. A complete copy of ASLRRA's motion may be viewed at *http://www.regulations.gov* under the docket number listed above. (*See* documents numbered 0048.1 and 0048.2 in the docket).

Separately, by a letter dated September 29, 2010, ASLRRA notified FRA of an error in its "Second Amended Exhibit A" upon which FRA based its initial grant of relief. (See document number 0078.1 in the docket). Specifically, ASLRRA notified FRA that one ASLRRA member railroad, the Heart of Georgia Railroad, was inadvertently omitted from the amended exhibit. Noting that the Heart of Georgia Railroad had properly executed the application agreeing to participate in ASLRRA's petition and proposed pilot project, and had already filed evidence of its employee concurrence with the waiver in the docket as required by FRA's March 5, 2010, letter, ASLRRA requested that FRA add the Heart of Georgia Railroad to the list of railroads participating in the waiver. FRA has done so, subject to public comment on the Heart of Georgia Railroad's participation in the waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2009–0078) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on December 1, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–30532 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 65]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Designated Federal Officer/Administrative Officer, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of August 20, 2010 (75 FR 51525). The 42nd full RSAC meeting was held September 23, 2010, and the 43rd meeting is scheduled for December 14, 2010, at the National Association of Home Builders, National Housing Center, located at 1201 15th Street, NW., Washington, DC 20005.

Since its first meeting in April of 1996, the RSAC has accepted 34 tasks. Status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Robert Lauby, (202) 493–6474.

Task 03–01—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group reports planned activity to the full RSAC at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held on September 9–10, 2003, a consolidated list of issues was completed. At the second meeting, held on November 6–7, 2003, four task groups were established: Emergency Preparedness, Mechanical, Crashworthiness, and Track/Vehicle Interaction. The task forces met and reported on activities for Working Group consideration at the third meeting, held on May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007; December 11–12, 2007; November 13, 2008; and June 8, 2009. On August 5, 2009, the Working Group was requested to establish an Engineering Task Force (ETF) to consider technical criteria and procedures for qualifying alternative passenger equipment designs as equivalent in safety to equipment meeting the design standards in the Passenger Equipment Safety Standards. The Working Group met on September 16, 2010; currently there are no additional meetings scheduled. Contact: Charles Bielitz, (202) 493–6314.

(*Engineering Task Force)* The Passenger Safety Working Group approved a request from FRA to establish an ETF under the Passenger Safety Working Group in August 2009. The mission of the ETF is to produce a set of technical evaluation criteria and procedures for passenger rail equipment built to alternative designs. The technical evaluation criteria and procedures would provide a means of establishing whether an alternative design would result in performance at least equal to the structural design standards set forth in the Passenger Equipment Safety Standards (Title 49 Code of Federal Regulations (CFR) Part 238). The initial focus of this effort will be on Tier I standards. When completed, the criteria and procedures would form a technical basis for making determinations concerning equivalent safety pursuant to 49 CFR Section 238.201, and provide a technical framework for presenting evidence to FRA in support of any request for waiver of the compressive (buff) strength requirement, as set forth in 49 CFR 238.203. *See* 49 CFR part 211, Rules of Practice. The criteria and procedures could be incorporated into 49 CFR part 238 at a later date after a notice and an opportunity for public comment. The ETF was formed and a kickoff meeting was held on September 23–24, 2009. The group met again on November 3–4, 2009; January 7–8, 2010; and March 9–10, 2010. A followup GoTo/Webinar meeting was held on July 12, 2010. The ETF developed a draft *Criteria and Procedures Report* that was approved by the Passenger Safety Working Group during the September 16, 2010, meeting and by the RSAC Committee during the September 23, 2010, meeting. The document has been placed on the FRA Web site at the following address: *http://www.fra.dot.gov/downloads/safety/RSAC_REPORT-%209-16-10.pdf.*

(*Engineering Task Force II*) To build on the success of the ETF in developing a set of alternative technical criteria and procedures for evaluating the crashworthiness and occupant protection performance of passenger rail equipment in service at conventional operating speeds, the FRA requested that the Passenger Safety Working Group re-task the group to concentrate on developing crashworthiness and occupant protection safety recommendations for high-speed passenger trains. The Passenger Safety Working Group accepted the task on July 28, 2010, by electronic vote. Under the new task, the task force may address any safety features of the equipment, including, but not limited to, crashworthiness, interior occupant protection, glazing, emergency egress, and fire safety features. Any type of equipment may be addressed, including conventional locomotives, high-speed power cars, cab cars, multiple-unit (MU) locomotives, and coach cars. The equipment addressed may be used in any type of passenger service, from conventional-speed to high-speed. Recommendations may take the form of criteria and procedures, revisions to existing regulations, or adoption of new regulations, including rules of particular applicability. The work of the re-tasked ETF is intended to assist FRA in developing appropriate safety standards for the high-speed rail projects planned in California and Florida. The ETF II held a kickoff meeting on October 21–22, 2010, to begin work on the new high-speed task and has a followup meeting scheduled for January 11–12, 2011. Contact: Robert Lauby, (202) 493–6474.

(Emergency Preparedness Task Force) At the Working Group meeting on March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to and approved by the full RSAC on May 18, 2005. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006 (71 FR 50275), and was open for comment until October 23, 2006. The Working Group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The task force met on October 17–18, 2007, and reached consensus on

the draft rule text for a followup NPRM on Passenger Train Emergency Systems, focusing on low location emergency exit path marking, emergency lighting, and emergence signage. The task force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to and approved by full RSAC vote during the February 20, 2008, meeting. During the May 13–14, 2008, meeting, the task force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The Working Group ratified these recommendations on June 19, 2008. The task force met again on March 31, 2009, to clarify issues related to the followup NPRM raised by members. The modified rule text was presented to and approved by the Passenger Safety Working Group on June 8, 2009. The Working Group requested that FRA draft the rule text requiring daily inspection of removable panels or windows in vestibule doors and entrust the Emergency Preparedness Task Force with reviewing the text. FRA sent the draft text to the task force for review and comment on August 4, 2009. The draft rule text was approved by the Passenger Safety Working Group by mail ballot on December 23, 2009. The target timeframe for the NPRM publication is January 2011 due to competing Rail Safety Improvement Act of 2008 (RSIA) priorities. No additional task force meetings are currently scheduled. Contact: Brenda Moscoso, (202) 493–6282.

(Mechanical Task Force—Completed) Initial recommendations on mechanical issues (revisions to 49 CFR part 238) were approved by the full RSAC on January 26, 2005. At the Working Group meeting of September 7–8, 2005, the task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

(Crashworthiness Task Force—Completed) Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static-end strength that were adopted by the Working Group on September 7–8, 2005. The full RSAC accepted the recommendations on October 11, 2005. The NPRM regarding front-end strength of cab cars and MU locomotives was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the NPRM. Based on the consensus language agreed to at the meeting, FRA has prepared the text of the final rule, incorporating the resolutions made at the task force meeting. The final rule language was adopted at the Passenger Safety Working Group meeting held on November 13, 2008. The language was presented and approved at the December 10, 2008, full RSAC meeting. The final rule was issued on December 31, 2009, and was published on January 8, 2010 (75 FR 1180). Contact: Gary Fairbanks, (202) 493–6322.

(Vehicle/Track Interaction Task Force) The task force is developing proposed revisions to 49 CFR parts 213 and 238, principally regarding high-speed passenger service. The task force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC, and presented the final task force report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the Working Group and were presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met on February 27–28, 2008, and by teleconference on March 18, 2010, to address unresolved issues, and the NPRM was published on May 10, 2010 (75 FR 25928). The task force was called back into session on August 5–6, 2010, to review and consider NPRM comments, and the target date set for the Final Rule is April 2011. Contact: John Mardente, (202) 493–1335.

(General Passenger Safety Task Force) At the Passenger Safety Working Group meeting on April 17–18, 2007, the task force presented a progress report to the Working Group. The task force met on July 18–19, 2007, and afterwards it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the Working Group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR Part 225 accident/incident cause codes on October 25, 2007. The General Passenger Safety task force presented draft guidance material for management of the gap that was considered and approved by the Working Group during the December 11–12, 2007, meeting, and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met on April 23–24, 2008, December 3–4, 2008, and on April 21–23, 2009, October 7–8, 2009, and July 30, 2010, by GoTo/Webinar teleconference. The task force continues work on passenger train door securement, "second train in station," trespasser incidents, and System Safety-based solutions by developing a regulatory approach to System Safety. The task force has created two Task Groups to focus on these issues.

The Door Safety Task Group has reached consensus on 47 out of 48 safety issues and has five items that have been remanded to the task force for vote that are addressed in the area of passenger train door mechanical and operational requirements. The group presented draft regulatory language to the Passenger Safety Working Group at the September 16, 2010, meeting. More work remains to ensure the 49 CFR Part 238 door rule consensus document and the proposed American Public Transit Association (APTA) door standard (APTA SS–M–18–10) use uniform language. The Passenger Safety Working Group conditionally agreed to vote electronically on the proposal providing the new language and the APTA door standard (APTA SS–M–18–10) are uniform. No additional Door Safety Task Group meetings are currently scheduled.

The System Safety Task Group has produced draft regulatory language for a System Safety Rule, but further work on this rulemaking is delayed until a study required by the RSIA to determine whether additional protections are necessary to protect System Safety Program Plan risk analysis data is complete. The RSIA deadline for the System Safety Rule is October 2012. No additional System Safety Task Group meetings are currently scheduled. Contact: Dan Knote, (631) 567–1596.

Task 05–01—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR part 214, Subpart C—Roadway Worker Protection (RWP), and related sections of Subpart A; to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group was established, and reported to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. Over the

course of 2 years, the group drafted and reached consensus on regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding one of those items, namely, the draft language concerning electronic display of track authorities. The Working Group presented and received approval on all of its consensus recommendations for draft rule text to the full RSAC at the June 26, 2007, meeting. FRA will address the electronic display of track authorities issue along with eight additional items that the Working Group was unable to reach consensus on, through the traditional NPRM process. In early 2008, the external Working Group members were solicited to review the consensus rule text for errata review. In order to address the heightened concerns raised with the current regulations for adjacent-track, on-track safety, FRA decided to issue, on an accelerated basis, a separate NPRM that would focus on this element of the RWP rule alone. An NPRM with an abbreviated comment period regarding adjacent-track, on-track safety was published on July 17, 2008, but was later withdrawn on August 13, 2008, to permit further consideration of the RSAC consensus language. A second NPRM concerning adjacent-controlled-track, on-track safety was published on November 25, 2009, and comments were due to the docket by January 25, 2010. Comments have been reviewed and considered by FRA, and the target publication date for the final rule is April 2011. Due to the ongoing work of this separate rulemaking, the remaining larger NPRM relating to the various revisions, clarifications, and additions to 31 separate items in 19 sections of the rule, and FRA's recommendations for 9 nonconsensus items is now planned for June 2011. Contact: Christopher Schulte, (610) 521–8201.

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed, and the Working Group extensively reviewed the issues presented. The final Working Group meeting devoted to developing a proposed rule was held February 8–9, 2006. The Working Group was not able to deliver a consensus regulatory proposal, but it did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (71 FR 60372), with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, and one on April 4–5, 2007. Consensus was reached on four items and those items were presented to and accepted by the full RSAC at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working Group meetings were held on September 27–28, 2007; January 17–18, 2008; May 21–22, 2008; and September 25–26, 2008. The Working Group has considered issues related to issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty), and "after arrival mandatory directives," among other issues. The Working Group continues to work on after arrival orders, and at the September 25–26, 2008, meeting voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of grade crossing warning systems providing "short or no warning" resulting from or contributed to "by train operational issues" with the intent to recommend new accident/incident reporting codes that would better explain such events, and which may provide information for remedial action going forward. A followup task is to review and provide recommendations regarding supplementary reporting of train operations-related, no-warning or short-warning incidents that are not technically warning system activation failures but that result in an accident/incident or a near miss. The task force has been formed and will begin work after other RSIA priorities are met. Contact: Douglas Taylor, (202) 493–6255.

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise it as appropriate. A Working Group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first Working Group meeting was held May 8–10, 2006. Working Group meetings were held on August 8–9, 2006; September 25–26, 2006; October 30–31, 2006; and the Working Group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the Working Group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The Working Group met on January 9–10, 2007; November 27–28, 2007; February 5–6, 2008; May 20–21, 2008; August 5–6, 2008; October 22–23, 2008; January 6–7, 2009; and April 15–16, 2009. The Working Group has now completed the review of 49 CFR Part 229 and was unable to reach consensus regarding locomotive cab temperatures standards, locomotive alerters, and remote control locomotives. The group reached consensus regarding critical locomotive electronic standards, updated annual/biennial air brake standards, clarification of the "air brakes operate as intended" requirement, locomotive pilot clearance within hump classification yards, clarification of the "high voltage" warning requirement, an update of "headlight lamp" requirements, and language to allow locomotive records to be stored electronically. The Working Group presented a draft 49 CFR Part 229 rule text revision covering these items to the RSAC for consideration at the September 10, 2009, meeting, and received approval. FRA has proceeded with drafting an NPRM with a target publication date of December 2010. The Working Group may be called back to address comments received on the NPRM after publication. Contact: George Scerbo, (202) 493–6249.

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A Working Group has been established and will report any planned activity at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held December 12–13, 2006. The Working Group has held followup meetings on the following dates: February 20–21, 2007; July 24–25, 2007; August 29–30, 2007; October 31–November 1, 2007; December 4–5, 2007; February 13–14, 2008; March 26–27, 2008; April 22–23, 2008; and December 8–9, 2009. At the April 2008 meeting, FRA announced

that the agency would prepare an NPRM draft based on the discussions to date and schedule a further meeting for review of the document. The Working Group was reconvened December 8–9, 2009, and an updated draft NPRM was presented to the Working Group for review and comment. The Working Group has held followup meetings on February 16–17, 2010; March 11–12, 2010; May 24–26, 2010; and August 31–September 1, 2010. The Working Group last met November 18–19, 2010, and is planning to schedule its next meeting on dates to be determined by Working Group members during the second quarter of FY 2011. No additional Medical Standards Working Group meetings are currently scheduled at this time. Once completed, the draft medical standards rule will be presented to the full RSAC for approval. Contact: Dr. Bernard Arseneau, (202) 493–6002.

(Critical Incident Task Force) The Medical Standards Working Group accepted RSAC Task 2009–02, Critical Incident Response, during the December 8–9, 2010, meeting. The Working Group has been tasked to provide advice regarding development of implementing regulations for critical incident stress plans, as required by the RSIA. On September 10, 2009, the task was accepted to provide advice for development of a proposed rule that implements Section 410 of the RSIA requiring each covered railroad to implement an approved "critical incident stress plan." During the Medical Standards Working Group meeting held May 24–25, 2010, the Working Group established a Critical Incident Task Force. The task force will report its activities and progress to the Medical Standards Working Group and full RSAC during each Working Group and full RSAC meeting. FRA has solicited applications to assess the applicability of current knowledge about post traumatic interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposure in the railroad setting. The Medical Standards Working Group plans to nominate the grantee for appointment to the Critical Incident Task Force during the next Working Group meeting. An initial meeting of the Critical Incident Task Force will be scheduled once the grant has been awarded. Contact: Dr. Bernard Arseneau, (202) 493–6002.

(*Physicians Task Force*) A Physicians Task Force was established by the Working Group in May 2007. The task force is developing medical criteria and protocols for medical conditions. These medical criteria and protocols will be used to assess the medical fitness of safety-critical employees to perform safety-critical service under a proposed medical standards rule. The medical criteria and protocols will be presented to the Medical Standards Working Group and FRA when complete. The Physicians Task Force has had meetings or conference calls on July 24, 2007; August 20, 2007; October 15, 2007; October 31, 2007; June 23–24, 2008; September 8–10, 2008; October 8, 2008; November 12–13, 2008; December 8–10, 2008; January 27–28, 2009; February 24–25, 2009; March 11–12, 2009; March 31–April 1, 2009; April 15, 2009; April 22, 2009; May 13, 2009; May 20, 2009; June 17, 2009; January 21–22, 2010; March 3, 2010; and August 16–17, 2010. The Physicians Task Force last met October 25–26, 2010, and plans to schedule a conference call during December 2010 and to schedule a followup meeting during the second quarter of FY 2011. Contact: Dr. Bernard Arseneau, (202) 493–6002.

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on continuous welded rail (CWR), specifically to: Review controls applied to the re-use of rail in CWR "plug rail"; review the issue of cracks emanating from bond wire attachments; consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held on June 27–28, 2007, and the group met again on August 15–16, 2007, and October 23–24, 2007. Two task forces were created under the Working Group: Concrete Ties Task Force and Rail Integrity Task Force. The Concrete Ties Task Force met on November 26–27, 2007; February 13–14, 2008; April 16–17, 2008; July 9–10, 2008; and September 17–18, 2008. The Concrete Ties Task Force finalized consensus language regarding concrete crossties (49 CFR Part 213) and presented a recommendation to the Track Standards Working Group at the November 20, 2008, Working Group meeting. The language was approved by both the Working Group and the December 10, 2008, RSAC meeting and the task force was dissolved. The Concrete Crossties NPRM was published on August 26, 2010 (75 FR 52490). The Track Standards Working Group met on October 26–27, 2010, to discuss the outstanding issue of Plug rail. The Working Group reached consensus on regulatory language regarding the reuse of plug rail, and the consensus language will be presented to the RSAC Committee during the December 14, 2010, meeting for approval. RSAC Task 07–01 will be complete if approved by the Committee and no further Working Group meetings are currently scheduled. Contact: Carlo Patrick, (202) 493–6399.

Task 08–03—Track Safety Standards Rail Integrity. This task was accepted on September 10, 2008, to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The task force met on February 12–13, 2008; April 15–16, 2008; July 8–9, 2008; September 16–17, 2008; February 3–4, 2009; June 16–17, 2009; October 29–30, 2009; January 20–21, 2010; March 9–11, 2010; and April 20, 2010. Consensus has been achieved on bond wires and a common understanding on internal rail flaw inspections has been reached. The task force has reached consensus to recommend to the Working Group that the item regarding "the effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results" be closed. The task force does not recommend regulatory action concerning head wear. Surface conditions and their effect on test integrity has been discussed and understood during dialogue concerning common understanding on internal rail flaw inspections. The task force believes that new technology has been developed that improves test performance and will impact the effect of head wear and surface conditions on interpretation of internal rail flaw test results. Consensus text was developed on recommended changes that would approach a performance-based approach to flaw detection scheduling. However, the group did not reach consensus on what length of segment of track is practical to use on determining test cycles. Consensus text has been finalized for recommended changes to 49 CFR 213.113 (Defective rails), 213.237 (Rail inspection), and 213.241 (Inspection records). The task force has developed a new 49 CFR 213.238, Qualified operator language, that defines the

minimum requirements for the training of a rail flaw detector car operator. The task force presented the consensus language to the Track Standards Working Group during the July 28–30, 2010, meeting and the Track Standards Working Group presented its consensus recommendations to the RSAC Committee for approval during the September 23, 2010, Committee meeting. By majority vote, the RSAC accepted the recommendations of the Track Standards Working Group and forwarded those recommendations to the FRA Administrator completing RSAC Task 08–03. The associated NPRM is currently in development. Contact: Carlo Patrick, (202) 493–6399.

Task No. 08–04—Positive Train Control. This task was accepted on December 10, 2008, to provide advice regarding the development of implementing regulations for Positive Train Control (PTC) systems and their deployment under the RSIA. The task included a requirement to convene an initial meeting no later than January 2009, and to report recommendations back to RSAC no later than April 24, 2009. The PTC Working Group was created in December 2008 by Working Group member nominations from committee member organizations under Task 08–04, and the kickoff meeting was held on January 26–27, 2009. The group met again on February 11–13; 25–27; March 17–18, 2009; and March 31–April 1, 2009. On April 2, 2009, the RSAC approved the request by the Working Group for agreement to vote on the draft rule text recommendations from the working group by mail ballot. On May 11, 2009, by majority vote via mail ballot, the RSAC accepted the recommendations of the PTC Working Group and forwarded those recommendations to the Administrator, with the understanding that there are other issues for which FRA would be making proposals with respect to their resolution. The NPRM was published on July 21, 2009 (74 FR 36152), with comments due by August 20, 2009. In addition, a public hearing was held on August 13, 2009 (74 FR 36152). The PTC Working Group was reconvened on August 31–September 2, 2009, to discuss comments received on the NPRM, and the PTC Working Group presented consensus rule text items to the RSAC for approval at the September 10, 2009, meeting. The PTC consensus rule text was approved by majority RSAC vote by electronic ballot on September 24, 2009, and the final rule was published on January 15, 2010 (75 FR 2598). Final rule amendments were published on September 27, 2010 (75 FR 59108). No additional meetings are scheduled.

(*PTC Implementation Plan Task Force*) A task force was formed to assist FRA in developing a model template for a successful PTC Implementation Plan (PTCIP), and in development of an example associated Risk Prioritization Methodology. PTCIPs were required to be submitted by April 16, 2010, under the mandate of the RSIA. On January 12, 2010, FRA posted to its public Web site a final version of a PTCIP template and an example risk prioritization methodology model for prioritization of line segment implementation. This was the same day the final rule was made available for public review. No further meetings of this task force are currently scheduled. Contact: Tom McFarlin, (202) 493–6203.

(PTC Risk Evaluation Task Force) The creation of the PTC Risk Evaluation Task Force was approved by the PTC Working Group on April 1, 2010, to develop a computer model to estimate the risk of PTC-preventable accidents on a line segment basis. The group was formed by nominations from members of the PTC Working Group and the kickoff meeting was held via GoTo/Webinar on June 17, 2010. A followup meeting was held on August 3, 2010, and an additional followup GoTo/Webinar meeting was held on September 7, 2010. No additional meetings are scheduled at this time. Contact: Mark Hartong, (202) 493–1332.

Task No. 08–07—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and report recommendations for proposed or interim final rule (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by October 16, 2009. The Conductor Certification Working Group was officially formed by nominations from member organizations in April 2009, and the first meeting was held on July 21–23, 2009. Additional meetings were held on August 25–27, 2009; September 15–17, 2009; October 20–22, 2009; November 17–19, 2009; and December 16–18, 2009. Tentative consensus was reached on the vast majority of the regulatory text. The Working Group approved the draft rule text by electronic ballot and the consensus draft language was approved by the RSAC on March 18, 2010, by unanimous vote as the recommendation from the Committee to the FRA Administrator. The resulting NPRM was published in the **Federal Register** on November 10, 2010 (75 FR 69166). The Working Group may be called back to meet and review any comments received on the NPRM. After the final rule is published, the Working Group will reconvene to make conforming amendments to the locomotive engineer certification regulation as appropriate. Contact: Mark McKeon, (202) 493–6350.

Task No. 09–01—Passenger Hours of Service. This task was accepted on April 2, 2009, to provide advice regarding development of implementing regulations for the hours of service of operating employees of commuter and intercity passenger railroads under the RSIA. The group has been tasked to review available data concerning the effects of fatigue on the performance of subject employees and to consider the role of fatigue prevention in determining maximum hours of service. The group has also been tasked to consider the potential for alternative approaches to hour of service using available tools for evaluating the impact of various crew schedules and determine the effect of alternative approaches on the availability of employees to support passenger service. The group is charged to report whether existing hours of service restrictions are effective in preventing fatigue among subject employees, whether an alternative approach to hours of service for the subject employees would enhance safety and whether alternative restrictions on hours of service could be coupled with other fatigue countermeasures to promote the fitness of employees for safety-critical duties. The Passenger Hours of Service Working Group was officially formed through the formal Committee member nomination process in May 2009, and the first meeting was held on June 24, 2009. Followup Working Group meetings were held on February 2–3, 2010; March 4–5, 2010; April 6, 2010; May 20, 2010; and June 29, 2010. Consensus has been reached on a majority of the issues and the draft rule text has been matured. The Working Group plans to bring the draft to electronic vote during the month of August 2010 and, if passed, will present its recommendations to the RSAC on September 23, 2010. A Passenger Hours of Service Task Force was formed to review collected data and provide recommendations to the Working Group. The task force met on January 14–15, 2010; March 30–31, 2010; and June 16, 2010. The Working Group approved the draft rule text by electronic ballot on September 22, 2010, and the consensus draft language was approved by the RSAC on October 15,

2010, by unanimous electronic vote as the recommendation from the Committee to the FRA Administrator. Work to finalize the NPRM for publication is underway with a target publication date of April 2011. The Working Group will meet on December 9, 2010, to discuss the approved consensus language and the NPRM preamble. Contact: Mark McKeon, (202) 493–6350.

Task No. 10–01—Minimum Training Standards and Plans. This task was accepted on March 18, 2010, to establish minimum training standards for each class and craft of safety-related railroad employee and their railroad contractor and subcontractor equivalents, as required by RSIA. The group has been tasked to assist FRA in developing regulations responsive to the legislative mandate, while ensuring generally accepted principles of adult learning are employed in training and development, and delivery; determine a reasonable method for submission and FRA review of training plans which takes human resource limitations into account; establish reasonable oversight criteria to ensure training plans are effective, using the operational tests and inspections requirements of 49 CFR part 217 as a model. The Training Standards Working Group was officially formed through the formal Committee member nomination process in March 2010, and the first meeting was held on April 13–14, 2010. A followup Working Group meeting was held on June 2–3, 2010, and additional followup meetings are scheduled for August 17–18 and September 21–22, 2010. A Task Analysis Task Force was formed under the Working Group to develop a task analysis template, and met in Florence, KY, on June 22–23, 2010, with CSX Transportation hosting the event. The group developed a 21-page task analysis document for an outbound train yard carman position, which is complete regarding FRA railroad safety laws, regulations, and orders. The Working Group met on August 17–18 and October 19–20, 2010, and by GoTo/Webinar on November 15–16, 2010. The Working Group has reached consensus and the resulting training standards draft regulatory language will be presented to the RSAC Committee for approval on December 14, 2010. No additional Working Group meetings are scheduled at this time. Contact: Michael Logue, (202) 493–6301.

Task No. 10–02—Safety Technology in Dark Territory. This task was accepted on September 23, 2010, to provide advice regarding development of standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, as required by Section 406 of the RSIA. Specifically, to assist FRA in developing regulations responsive to the legislative mandate and to report recommendations to the FRA Administrator for a proposed or interim final rule (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by September 30, 2011. RSAC member organizations have submitted expressions of interest in participating in the Dark Territory Working Group and formation of the group and timelines for the task are on the RSAC meeting agenda for the December 14, 2010 Committee meeting. Contact: Olga Cataldi, (202) 493–6321.

Completed Tasks

Task 96–1—(Completed) Revising the freight power brake regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing locomotive engineer certification (49 CFR part 240).

Task 96–7—(Completed) Developing roadway maintenance machines (on-track equipment) safety standards.

Task 96–8—(Completed) This planning task evaluated the need for action responsive to recommendations contained in a report to Congress titled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed) Defining PTC functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed–task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Task 08–01—(Completed) Report on the Nation's Railroad Bridges. Report to FRA on the current state of railroad bridge safety management; update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey.

Task No. 08–06—(Completed) Hours of Service Recordkeeping and Reporting. Develop revised recordkeeping and reporting requirements for hours of service of railroad employees. Final rule published May 27, 2009, with an effective date of July 16, 2009. (74 FR 25330).

Task No. 08–05—(Completed) Railroad Bridge Safety Assurance. Develop a rule encompassing the requirements of Section 417 of the RSIA (Railroad Bridge Safety Assurance) regarding bridge failure. Final rule published on July 15, 2010 (75 FR 41282).

Task 06–02—(Completed) Track Safety Standards and CWR. Issue requirements for inspection of joint bars in CWR to detect cracks that could affect the integrity of the track structure published a final rule on August 25, 2009, with correcting amendment published on October 21, 2009.

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on December 2, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–30620 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0110]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 7, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Jerry, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone: (202) 366–5861 or e-mail: *frances.jerry@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Uniform Financial Reporting Requirements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0005.

Form Numbers: MA–172.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to the Maritime Administration are authorized by Section 801 of the Merchant Marine Act, 1936 (46 U.S.C. 53101 note). Financial reports are also required by regulation of purchasers of ships from MARAD on credit, companies chartering ships from MARAD, and of companies having Title XI guarantee obligations (46 CFR part 298).

Need and Use of the Information: The information collection is necessary for MARAD to determine compliance with regulatory and contractual requirements.

Description of Respondents: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Annual Responses: 66 respondents.

Annual Burden: 1254 burden hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act

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

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: November 30, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–30658 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0355]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0618, titled "Pipeline Safety: Periodic Underwater Inspection." PHMSA is preparing to request approval from OMB for a renewal of the current information collection.

DATES: Interested persons are invited to submit comments on or before February 7, 2011.

ADDRESSES: Comments may be submitted 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; U.S. DOT, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2010–0355, 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 visit *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 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–2010–0355." 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.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. DOT, PHMSA, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. The information collection expires March 31, 2011, and is identified under Control No. 2137–0618, titled: "Pipeline Safety: Periodic Underwater Inspection." As detailed in 49 CFR 192.612 and 195.413, PHMSA requires each operator of a natural gas or hazardous liquid pipeline in the Gulf of Mexico and its inlets to periodically inspect its pipelines in waters less than 15 feet (4.6 meters) deep as measured from mean low water that are at risk of being an exposed underwater pipeline or a hazard to navigation. If an operator discovers that its pipeline is an exposed underwater pipeline or poses a hazard to navigation, the operator must promptly report the location and, if available, the geographic coordinates of that pipeline to the National Response Center. *The following information is provided for this information collection:* (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity.

PHMSA requests comments on the following information collection:

Title: Pipeline Safety: Periodic Underwater Inspections.

OMB Control Number: 2137–0618.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Federal pipeline safety regulations (49 CFR parts 190–199) require operators to conduct appropriate underwater inspections in the Gulf of Mexico. If an operator finds that its pipeline is exposed on the seabed floor or constitutes a hazard to navigation, the operator must contact the National Response Center by telephone within 24 hours of discovery to report the location of the exposed pipeline.

Affected Public: Operators of underwater pipeline facilities.

Estimated number of responses: 82.

Estimated annual burden hours: 1,312 hours.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 1, 2010.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2010–30603 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2010–0323]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2011.

DATES: Effective January 1, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas, Program Manager, Substance Abuse Prevention Program, PHMSA, U.S. Department of Transportation, telephone 202–550–0629 or e-mail *stanley.kastanas@dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must select and test a percentage of covered employees for random drug testing. Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by 49 CFR 199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In 2009, the random drug test positive rate was less than one percent. Therefore, the minimum random drug testing rate will remain at 25 percent for calendar year 2011.

On January 19, 2010, PHMSA published an Advisory Bulletin (75 FR 2926) implementing the annual collection of contractor MIS drug and alcohol testing data. All applicable § 199.119 (drug testing) and § 199.229 (alcohol testing) MIS reporting operators are responsible for the submission of all contractor MIS reports to PHMSA, as well as their own, by March 15, 2011.

Contractors with employees in safety-sensitive positions who performed, as defined in § 199.3 of 49 CFR part 199, covered functions, must submit these reports only through the auspices of each operator for whom these covered employees performed those covered functions (i.e., maintenance, operations or emergency response).

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on November 24, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–30605 Filed 12–6–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Sound Incentive Compensation Guidance

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 January 6, 2011. 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* (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: Sound Incentive Compensation Guidance.

OMB Number: 1550–0129.

Form Number: N/A.

Description: The guidance is based on three key principles that are designed to ensure that incentive compensation arrangements at a financial institution do not encourage employees to take excessive risks. These principles provide that incentive compensation arrangements should:

- Provide employees incentives that do not encourage excessive risk-taking beyond the organization's ability to effectively identify and manage risk;
- Be compatible with effective controls and risk management; and
- Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

These principles and the guidance are consistent with the Principles for Sound Compensation Practices adopted by the Financial Stability Board (FSB) in April 2009, as well as the Implementation Standards for those principles issued by the FSB in September 2009. This guidance will promote the prompt improvement of incentive compensation practices in the banking industry by providing a common prudential foundation for incentive compensation arrangements across banking organizations and promoting the overall movement of the industry towards better practices. Supervisory action could play a critical role in addressing misaligned compensation incentives, especially where issues of competition may make it difficult for individual firms to act alone. Through their actions, supervisors could help to better align the interests of managers and other employees with organizations' long-term health and reduce concerns that making prudent modifications to incentive compensation arrangements might have adverse competitive consequences.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 757.

Estimated Burden Hours per Response: 40 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 30,280 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: December 1, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–30680 Filed 12–6–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities

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, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2011. 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 on (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: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

OMB Number: 1550–0025.

Form Number: N/A.

Description: The information for a Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities application is to provide the OTS with the information necessary to determine if the request should be approved. It allows for OTS evaluation of supervisory, accounting, and legal issues related to these transaction types. If the information were not collected, OTS would not be able to properly evaluate whether the proposed transaction meets applicable criteria.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 40.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 960 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: December 1, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–30676 Filed 12–6–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0675]

Agency Information Collection (VetBiz Vendor Information Pages Verification Program) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 6, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0675" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 565–7870 or e-mail: *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0675."

SUPPLEMENTAL INFORMATION:

Title: VetBiz Vendor Information Pages Verification Program, VA Form 0877.

OMB Control Number: 2900–0675.

Type of Review: Extension of a currently approved collection.

Abstract: The Vendor Information Pages (VIP) will be used to assist federal agencies in identifying small businesses owned and controlled by veterans and service-connected disabled veterans. This information is necessary to ensure that veteran own businesses are given the opportunity to participate in Federal contracts and receive contract solicitations information automatically. VA will use the data collected on VA Form 0877 to verify small businesses as veteran-owned or service-disabled veteran-owned.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2010, at page 60169.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: December 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–30550 Filed 12–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Agency Information Collection (Claim for Payment of Cost of Unauthorized Medical Services) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 6, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0080" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0080."

SUPPLEMENTAL INFORMATION:

Titles:

a. Claim for Payment of Cost of Unauthorized Medical Services, VA Form 10–583.

b. Funeral Arrangements Form for Disposition of Remains of the Deceased, VA Form 10–2065.

c. Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, VA Form 10–2511.

d. Authorization and Invoice for Medical and Hospital Services, VA Form 10–7078.

e. Request for Payment of Beneficiary Travel after the Date of Service.

OMB Control Number: 2900–0080.

Type of Review: Revision of a currently approved collection.

Abstract:

a. VA Form 10–583 is used to request payment or reimbursement of the cost of unauthorized non-VA medical services.

b. VA Form 10–2065 is completed by VA personnel during an interview with relatives of the deceased, and to identify the funeral home to which the remains are to be released. The form is also used as a control document when VA is requested to arrange for the transportation of the deceased from the place of death to the place of burial, and/or when burial is requested in a National Cemetery.

c. VA Form 10–2511 is used to process payment for ambulance or other hired vehicular forms of transportation for eligible veterans to and from VA health care facilities for examination, treatment or care.

d. VA uses VA Form 10–7078 to authorize expenditures from the medical care account and process payment of medical and hospital services provided by other than Federal health providers to VA beneficiaries.

e. Claimants who request payment for beneficiary travel after the time of service may do so in writing or in person.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2010, at page 60170.

Affected Public: Business or other for profit.

Estimated Total Annual Burden:

a. VA Form 10–583—17,188.

b. VA Form 10–2065—2,053.

c. VA Form 10–2511—2,333.

d. VA Form 10–7078—8,400.

e. Request for Payment of Beneficiary Travel after the Date of Service—417.

Estimated Average Burden Per Respondent:

a. VA Form 10–583—15 minutes.

b. VA Form 10–2065—5 minutes.

c. VA Form 10–2511—2 minutes

d. VA Form 10–7078—2 minutes.

e. Request for Payment of Beneficiary Travel after the Date of Service—1 minute.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. VA Form 10–583—68,750 respondents.

b. VA Form 10–2065—24,630 respondents.

c. VA Form 10–2511—70,000 respondents.

d. VA Form 10–7078—252,000 respondents.

e. Request for Payment of Beneficiary Travel after the Date of Service—25,000.

Dated: December 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–30551 Filed 12–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0749]

Agency Information Collection (Disability Benefits Questionnaires) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 6, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0749" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0749."

SUPPLEMENTAL INFORMATION:

Titles:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1.

OMB Control Number: 2900–0749.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21–0960a–1, 21–0960b–1, and 21–0960b–1 are used to expedite claims for the following presumptive diseases based on herbicide exposure: Hairy Cell and Other Chronic B-cell Leukemias, Parkinson's and Ischemic Heart diseases. Veterans have the option of providing the forms to their private physician for completion and submission to VA in lieu of scheduling a VA medical examination. The data collected will be used to adjudicate veterans claim for disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2010, at pages 60170–60171.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1—13,750.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1—500.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1—1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1—55,000.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1—2,000.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1—5,000.

Dated: December 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–30552 Filed 12–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Agency Information Collection; Gravesite Reservation Survey (2-Year) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 6, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0546" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0546" In any correspondence.

SUPPLEMENTAL INFORMATION:

Title: Gravesite Reservation Survey (2-Year), VA Form 40–40.

OMB Control Number: 2900–0546.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 40–40 is sent biennially to individuals holding gravesite set-asides to ascertain their wish to retain the set-aside, or relinquish it. Gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside. The survey is conducted to assure that gravesite set-asides do not go unused.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2010, at page 60172.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 2,750.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents: 16,500.

Dated: December 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–30554 Filed 12–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0521]

Agency Information Collection (Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 6, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0521" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0521."

SUPPLEMENTARY INFORMATION:

Titles:

a. Report and Certification of Loan Disbursement, VA Form 26–1820.

b. Request for Verification of Employment, VA Form 26–8497.

c. Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0521.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders must obtain specific information concerning a veteran's credit history in order to properly underwrite the veteran's loan. VA loans may not be guaranteed unless the veteran is a satisfactory credit risk. The data collected on the following forms are used to ensure that applications for VA-guaranteed loans are underwritten in a reasonable and prudent manner.

a. VA Form 26–1820 is completed by lenders closing VA guaranteed and insured loans under the automatic or prior approval procedures.

b. VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA does not require the exclusive use of this form for verification purposes, any alternative verification document would be acceptable provided that all information requested on VA Form 26–8497 is provided.

c. Lenders making guaranteed and insured loans complete VA Form 26–8497a to verify the applicant's deposits in banks and other savings institutions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2010, at pages 60171–60172.

Affected Public: Business or other for profit.

Estimated Annual Burden:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—50,000 hours.

b. Request for Verification of Employment, VA Form 26–8497—16,667 hours.

c. Request for Verification of Deposit, VA Form 26–8497a—8,333 hours.

Estimated Average Burden per Respondent:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—15 minutes.

b. Request for Verification of Employment, VA Form 26–8497—10 minutes.

c. Request for Verification of Deposit, VA Form 26–8497a—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—300,000.

b. Request for Verification of Employment, VA Form 26–8497—150,000.

c. Request for Verification of Deposit, VA Form 26–8497a—150,000.

Dated: December 1, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Polar Bear (Ursus maritimus) in the United States; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2009–0042; 92210–1117–0000–FY09–B4]

RIN 1018–AW56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Polar Bear (Ursus maritimus) in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for polar bear (*Ursus maritimus*) populations in the United States under the Endangered Species Act of 1973, as amended (Act). In total, approximately 484,734 square kilometers (km^2) (187,157 square miles (mi^2)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Alaska and adjacent territorial and U.S. waters.

DATES: This rule becomes effective on January 6, 2011.

ADDRESSES: The final rule and final economic analysis are available for viewing at *http://www.regulations.gov.* You can view detailed, colored maps of critical habitat areas in this final rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm.* Supporting documentation used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786–3800; facsimile 907/78–3816.

FOR FURTHER INFORMATION CONTACT: Thomas J. Evans, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907–786–3800. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of the critical habitat for the polar bear in the United States in this final rule. For more information on the polar bear, refer to the final listing rule published in the **Federal Register** on May 15, 2008 (73 FR 28212), the proposed rule to designate critical habitat published in the **Federal Register** on October 29, 2009 (74 FR 56058), and the document published on May 5, 2010 (75 FR 24545), that made available the draft economic analysis (DEA). Detailed information on polar bear biology and ecology relevant to designation of critical habitat is discussed under the Primary Constituent Elements section below.

General Overview

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61). However, in accordance with the regulations at 50 CFR 424.12(h), we do not designate critical habitat within foreign countries or in other areas outside of U.S. jurisdiction. In the United States, polar bears occur in Alaska and adjacent State, Territorial, and U.S. waters. Therefore, these are the only areas we include in this critical habitat designation.

Delineation of critical habitat requires, within the geographical area occupied by the polar bear, identification of the physical and biological features essential to the conservation of the species that may require special management or protection. In general terms, physical and biological features essential to the conservation of the polar bear include: (1) Annual and perennial sea-ice habitats that serve as a platform for hunting, feeding, traveling, resting, and (to a limited extent) denning; and (2) terrestrial habitats used by polar bears for denning and reproduction, as well as for seasonal use in traveling or resting. The most important polar bear life functions that occur in these habitats are feeding and reproduction. Adult female polar bears are the most important reproductive cohort in the population.

Polar bears live in an extremely dynamic sea-ice environment. Much of polar bear range in the United States includes two major categories of sea ice: Land-fast ice and pack ice. When we refer to sea-ice habitat in this final rule, we are referring to both of these types of ice. Land-fast ice is either frozen to land or to the benthos (bottom of the sea) and is relatively immobile throughout the winter. Shore-fast ice, a type of land-fast ice also known as "fast ice," is defined by the *Arctic Climate Impact Assessment* (2005, p. 190) as ice that grows seaward from a coast and remains stationary throughout the winter and that is typically stabilized by grounded pressure ridges at its outer edge. Pack ice consists of annual and heavier multi-year ice that is in constant motion due to winds and currents. It is located in pelagic (open ocean) areas and, unlike land-fast ice, can be highly dynamic. The actions of winds, currents, and temperature result in the formation of leads (linear openings or cracks in the sea ice), pressure ridges, and ice floes of various sizes. While the composition of land-fast ice is uniform, regions of pack ice can consist of various ages and thicknesses, from new ice only days old that may be several centimeters (inches) thick, to multiyear ice that has survived several years and may be more than 2 meters (6.56 feet (ft)) thick. Polar bear use of these habitats may be influenced by several factors and the interaction among these factors, including: (1) Water depth; (2) atmospheric and oceanic currents or events; (3) climate phenomena such as temperature, winds, precipitation, and snowfall; (4) proximity to the continental shelf; (5) topographic relief (which influences accumulation of snow for denning); (6) presence of undisturbed habitats; (7) secure resting areas that provide refuge from extreme weather, other bears, or humans; and (8) prey availability.

Unlike some other marine mammal species, polar bears generally do not occur at high densities in specific areas such as rookeries and haulout sites. However, some denning areas, referred to as core denning areas, have a history of higher use by polar bears. In addition, terrestrial coastal areas are experiencing increasing use by polar bears for longer durations during the fall open-water period (the season when there is a minimum amount of ice present, which occurs during the period from when the sea ice melts and retreats during the summer, to the beginning of freeze-up during the fall) (Schliebe *et al.* 2008, p. 2).

As polar bears evolved from brown bears (*Ursus arctos*), they became increasingly specialized for hunting seals from the surface of the sea ice (Stirling 1974, p. 1,193; Smith 1980, p. 2,206; Stirling and Øritsland 1995, p. 2,595). Currently, little is known about the dynamics of ice seal populations (seals that rely on sea ice for their life-history functions) in the Arctic or threats to these populations. However, the status of the populations of the primary species of ice seals in the Arctic is currently being investigated by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service. We do know, however, that polar bears require sea ice as a platform from which to search for and hunt these seals. Polar bear movements are influenced by the accessibility of seals, their primary prey. The formation and movement patterns

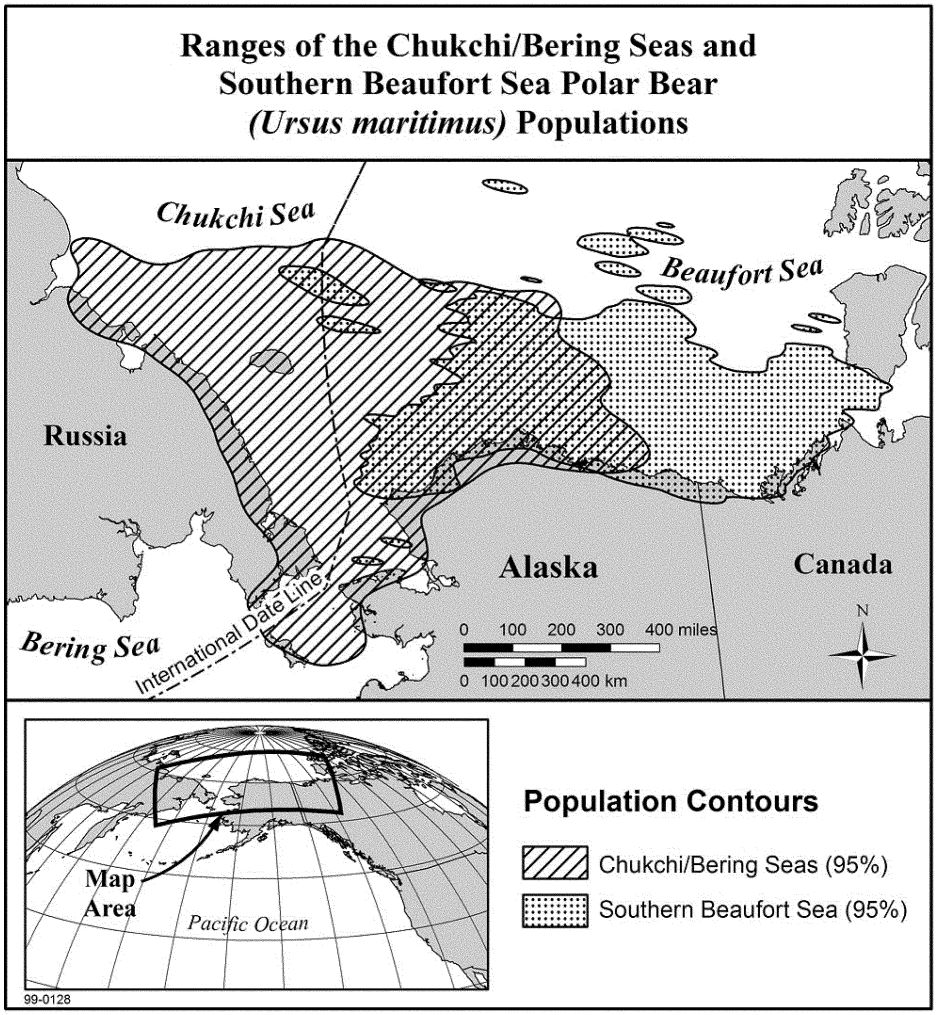
of sea ice strongly influence the distribution and accessibility of ringed seals (*Pusa hispida*), the main prey for polar bears, and bearded seals (*Erignathus barbatus*), a less-used prey species. When the annual sea ice begins to form in the shallower water over the continental shelf, polar bears that had retreated north of the continental shelf during the summer return to the shallower shelf waters where seal densities are higher (Durner *et al.* 2009a, p. 55). During the winter period, when energetic demands are the greatest, nearshore lead systems and ephemeral (may close during the winter) or recurrent (open throughout the winter) polynyas (areas of open sea surrounded by sea ice) are important for seals, and are thus important foraging habitat for polar bears. During the spring period, nearshore lead systems continue to be important hunting and foraging habitat for polar bears. The shore-fast ice zone, where ringed seals construct subnivean (in or under the snow) birth lairs for pupping, is also an important foraging habitat during the spring (Stirling *et al.* 1993, p. 20). Polar bears in the southern Beaufort Sea reach their peak weights during the fall and early winter period (Durner and Amstrup 1996, p. 483). Thus, availability and accessibility of prey during this time may be critical for survival through the winter.

In northern Alaska, denning habitat is more diffuse than in other areas where high-density denning by polar bears has been identified (Amstrup 2003, p. 595). Areas, such as barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat, receive proportionally greater use for denning than other areas (Durner *et al.* 2003, entire; Durner *et al.* 2006a, entire). Snow cover, both on land and on sea ice, is an important component of polar bear habitat in that it provides insulation and cover for polar bear dens (Durner *et al.* 2003, p. 60). Geographic areas containing physical features suitable for snow accumulation and denning by polar bears have been delineated on the North Slope for an area from the Colville River Delta at Prudhoe Bay, Alaska, to the Canadian border (Durner *et al.* 2001, p. 119; Durner *et al.* 2003, p. 60).

Description and Taxonomy

Polar bears are the largest of the living bear species (Demaster and Stirling 1981, p. 1; Stirling and Derocher 1990, p. 190) and are the only bear species that is evolutionarily adapted to the arctic sea-ice and marine habitat. Using movement patterns, tag returns from harvested animals, and, to a lesser degree, genetic analysis, Aars *et al.* (2006, pp. 33–47) determined that polar bears occur in 19 relatively discrete populations. Genetic analyses have reinforced the observed boundaries between some designated populations (Paetkau *et al.* 1999, p. 1,571; Amstrup 2003, p. 590), while confirming overlap among others (Paetkau et al. 1999, p. 1,571; Amstrup *et al.* 2004a, p. 676; Amstrup *et al.* 2005, p. 252; Cronin *et al.* 2006, p. 656). Currently, there are two polar bear populations in the United States: the southern Beaufort Sea population, which extends into Canada; and the Chukchi-Bering Seas population, which extends into the Russian Federation (Russia) (Figure 1) (Amstrup *et al.* 2004a, p. 670). Although the two U.S. populations are not distinguishable genetically (Paetkau *et al.* 1999, p. 1576; Cronin *et al.* 2006, p. 658), the population boundaries are thought to be ecologically meaningful and distinct enough to be used for management (Amstrup *et al.* 2004a, p. 670). The Service listed the polar bear as a threatened species throughout its range under the Act on May 15, 2008 (73 FR 28212; final rule available at *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm*).

Figure 1. Approximate bounds (95 percent contour) for the southern Beaufort Sea and the Chukchi-Bering Seas polar bear populations based on satellite radio-telemetry locations from 1985 – 2003.



Polar bears are characterized by large body size, a stocky form, and fur color that varies from white to yellow. They are sexually dimorphic; females weigh 181 to 317 kilograms (kg) (400 to 700 pounds (lbs)), and males weigh up to 654 kg (1,440 lbs). Polar bears have a longer neck and a proportionally smaller head than other members of the bear family (Ursidae), and are missing the distinct shoulder hump common to brown bears. The nose, lips, and skin of polar bears are black (Demaster and Stirling 1981, p. 1; Amstrup 2003, p. 588).

Polar bears evolved in sea-ice habitats for over 200,000 years and as a result are evolutionarily adapted to this environment (Talbot and Shields 1996, p. 490). Adaptations unique to polar bears include: (1) White pelage with water-repellent guard hairs and dense under-fur; (2) a short, furred snout; (3) small ears with reduced surface area; (4) teeth specialized for a carnivorous rather than an omnivorous diet; and (5) feet with tiny papillae on the underside, which increase traction on ice (Stirling 1988, p. 24). Additional adaptations include large, paddle-like feet (Stirling 1988, p. 24), and claws that are shorter and more strongly curved than those of brown bears and that are larger and heavier than those of black bears (*Ursus americanus*) (Amstrup 2003, p. 589).

Distribution and Habitat

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61), and rely on sea ice as their primary habitat (Lentfer 1972, p. 169; Stirling and Lunn 1997, pp. 169–170; Amstrup 2003, p. 587). The distribution and movements of polar bears in the United States are closely tied to the seasonal dynamics of sea-ice extent as it retreats northward during summer melt and advances southward during autumn freeze. The southern Beaufort Sea population occurs south of Banks Island and east of the Baille Islands, Canada; ranges west to Point Hope, Alaska; and includes the coastline of Northern Alaska and Canada up to approximately 40 km (25 mi) inland (Figure 1). The Chukchi-Bering Seas population is widely distributed on the sea ice in the Chukchi Sea and northern Bering Sea and adjacent coastal areas in Alaska and Russia. The eastern boundary of the Chukchi-Bering Seas population is near Colville Delta (Arthur *et al.* 1996, p. 219; Amstrup *et al.* 2004a, p. 254), and the western boundary is near Chauniskaya Bay in the Eastern Siberian Sea. The boundary between the Eastern Siberian Sea population and the Chukchi-Bering Seas population was determined from movements of adult female polar bears captured in the Bering and Chukchi Seas region (Garner *et al.* 1990, p. 222) (Figure 1). The Chukchi-Bering Seas population extends into the Bering Sea, and its southern boundary is determined by the annual extent of pack ice (Garner *et al.* 1990, p. 224; Garner *et al.* 1994, p. 113; Amstrup *et al.* 2004a, p. 670). Historically polar bears have ranged as far south as St. Matthew Island (Hanna 1920, pp. 121–122) and the Pribilof Islands (Ray 1971, p. 13) in the Bering Sea. Adult female polar bears captured in the Beaufort Sea may make

seasonal movements into the Chukchi Sea in an area of overlap located between Point Hope and Colville Delta, centered near Point Lay (Amstrup *et al.* 2002, p. 114; Amstrup *et al.* 2005, p. 254). Distributions based on satellite radio-telemetry data show zones of overlap between the Chukchi-Bering Seas population and the southern Beaufort Sea population (Amstrup *et al.* 2004a, p. 670; Amstrup *et al.* 2005, p. 253). Telemetry data indicate that polar bears marked in the Beaufort Sea spend about 25 percent of their time in the northeastern Chukchi Sea, whereas females captured in the Chukchi Sea spend only 6 percent of their time in the Beaufort Sea (Amstrup 1995, pp. 72–73). Average activity areas of females in the Chukchi-Bering Seas population (244,463 km^2, range 144,659–351,369 km^2 (94,387 mi^2, range 55,852–135,664 mi^2)) (Garner *et al.* 1990, p. 222) were more extensive than those in the Beaufort Sea population (166,694 km^2, range 14,440–616,800 km^2 (64,360 mi^2, range 21,564–52,380 mi^2)) (Amstrup *et al.* 2000b, p. 960). Radio-collared adult females of the Chukchi-Bering Seas population (n = 20) spent 68 percent of their time in the Russian region and 32 percent in the American region (Garner *et al.* 1990, p. 224).

Sea-Ice Habitat

Polar bears depend on sea ice for a number of purposes, including as a platform from which to hunt and feed upon seals; as habitat on which to seek mates and breed; as a platform on which to travel to terrestrial maternity denning areas, and sometimes for maternity denning; and as a substrate on which to make long-distance movements (Stirling and Derocher 1993, p. 241). Mauritzen *et al.* (2003b, p. 123) indicated that habitat use by polar bears during certain seasons may involve a trade-off between selecting habitats with abundant prey availability versus the use of safer retreat habitats of higher ice concentrations with less prey. Their findings indicate that polar bear distribution may not be solely a reflection of prey availability, but that other factors such as energetic costs or risk may be involved.

Polar bears show a preference for certain sea-ice stages, concentrations, forms, and deformation types (Stirling *et al.* 1993, pp. 18–22; Arthur *et al.* 1996, p. 223; Ferguson *et al.* 2000b, pp. 770–771; Mauritzen *et al.* 2001, p. 1,711; Durner *et al.* 2004, pp. 16–20; Durner *et al.* 2009a, pp. 51–53). Using visual observations of bears or bear tracks, Stirling *et al.* (1993, p. 15) defined seven types of sea-ice habitat and determined habitat preferences. They suggested that the following are features that influenced polar bear distribution: (1) Stable shore-fast ice with drifts; (2) stable shore-fast ice without drifts; (3) floe edge ice; (4) moving ice; (5) continuous stable pressure ridges; (6) coastal low level pressure ridges; and (7) fiords and bays. Polar bears preferred the floe ice edge, stable shore-fast ice with drifts, and moving ice (Stirling 1990, p. 226; Stirling *et al.* 1993, p. 18). In another assessment, categories of sea-ice habitat included pack ice, shore-fast ice, transition zone (also known as the shear zone—the active area consisting of openings between the shore-fast ice and drifting pack ice), polynyas, and leads (USFWS 1995, p. 9).

Pack ice is the primary summer habitat for polar bears in the United States (Durner *et al.* 2004, pp. 16–20). Shore-fast ice is used by polar bears for feeding on seal pups, for movement, and occasionally for maternity denning (Stirling *et al.* 1993, p. 20). In protected bays and lagoons, the shore-fast ice typically forms in the fall and remains stationary throughout the winter. Along the open shorelines, the shore-fast ice consists of sea ice that freezes and eventually becomes grounded to the bottom, or develops from offshore ice that is pushed against the land by the wind and ocean currents (Lentfer 1972, p. 165). The shore-fast ice usually occurs in a narrow belt along the coast. Most shore-fast ice melts in the summer.

Open water at leads and polynyas attracts seals and other marine mammals and provides preferred hunting habitats during winter and spring. The shore system of leads and recurrent polynyas are productive areas and are kept at least partially open during the winter and spring by ocean currents and winds. The width of the leads ranges from several meters to tens of kilometers (Stirling *et al.* 1993, p. 17).

Polar bears must move throughout the year to adjust to the changing distribution of sea ice and seals (Stirling 1988, p. 63; USFWS 1995, p. 4). Although polar bears are generally limited to areas where the sea is ice-covered for much of the year, they are not evenly distributed throughout their range on sea ice. They show a preference for certain sea-ice stages and concentrations, and for specific sea-ice features (Stirling *et al.* 1993, pp. 18–22; Arthur *et al.* 1996, p. 223; Ferguson *et al.* 2000a, p. 1,125; Ferguson *et al.* 2000b, pp. 770–771; Mauritzen *et al.* 2001, p. 1,711; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2006a, pp. 34–35; Durner *et al.* 2009a, pp. 51–53). Sea-ice habitat quality varies temporally as well as geographically (Ferguson *et al.* 1997, p. 1,592; Ferguson *et al.* 1998, pp. 1,088–1,089; Ferguson *et al.* 2000a, p. 1,124; Ferguson *et al.* 2000b, pp. 770–771; Amstrup *et al.* 2000b, p. 962). Polar bears show a preference for sea ice located over and near the continental shelf (Derocher *et al.* 2004, p. 164; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2009a, p. 55). This is likely due to higher biological productivity in these areas (Dunton *et al.* 2005, pp. 3,467–3,468), and greater accessibility to prey in nearshore shear zones and polynyas compared to deep-water regions in the central polar basin (Stirling 1997, pp. 12–14). Bears are most abundant near the shore in shallow-water areas, and also in other areas where currents and ocean upwelling increase marine productivity and serve to keep the ice cover from becoming too consolidated in winter (Stirling and Smith 1975, p. 132; Stirling *et al.* 1981, p. 49; Amstrup and DeMaster 1988, p. 44; Stirling 1990, pp. 226–227; Stirling and Øritsland 1995, p. 2,607; Amstrup *et al.* 2000b, p. 960). Durner *et al.* (2004, pp. 18–19; Durner *et al.* 2009a, pp. 51–52) found that polar bears in the Arctic Basin prefer sea-ice concentrations (percent of ocean surface area covered by ice) greater than 50 percent, and located over continental shelf water, which in Alaska is at depths of 300 m (984 ft) or less.

Over most of their range, polar bears remain on the sea ice year-round or spend only short periods on land. In the Chukchi Sea and Beaufort Sea areas of Alaska and northwestern Canada, for example, less than 10 percent of the polar bear locations obtained via radio telemetry were on land (Amstrup 2000, p. 137; Amstrup, U.S. Geological Survey, unpublished data); the majority of land locations were of polar bears occupying maternal dens during the winter. However, some polar bear populations occur in seasonally ice-free environments and use land habitats for varying portions of the year.

Polar bear distribution in most areas varies seasonally with the extent of sea-ice cover and availability of prey (Stirling and Lunn 1997, p. 178). The seasonal movement patterns of polar bears emphasize the role of sea ice in their life cycle. During the winter in Alaska, sea ice may extend 400 kilometers km (248 mi) south of the Bering Strait, and polar bears will extend their range to the southernmost proximity of the ice (Ray 1971, p. 13; Garner *et al.* 1990, p. 222). Sea ice disappears from the Bering Sea and is greatly reduced in the Chukchi Sea in the summer, and polar bears occupying these areas move as much as 1,000 km (621 mi) to stay with the retreating pack ice (Garner *et al.* 1990, p. 222; Garner *et*

al. 1994, pp. 407–408). Throughout the Polar Basin during the summer, polar bears generally concentrate along the edge of or into the adjacent persistent pack ice (Durner *et al.* 2004; Durner *et al.* 2006a). Major northerly and southerly movements of polar bears appear to depend on distribution of sea ice, which, in turn, is determined by the seasonal melting and refreezing of sea ice (Amstrup 2000, p. 142).

In areas where sea-ice cover and character are seasonally dynamic, a large multi-year home range, of which only a portion may be used in any one season or year, is an important part of the polar bear life-history strategy. In other regions, where ice is less dynamic, home ranges are smaller and less variable (Ferguson *et al.* 2001, pp. 51–52). Data from telemetry studies of adult female polar bears show that they do not wander aimlessly on the ice, nor are they carried passively with the ocean currents as previously thought (Pedersen 1945 cited in Amstrup 2003, p. 587; Amstrup *et al.* 2000b, p. 956; Mauritzen *et al.* 2001, p. 1704; Mauritzen *et al.* 2003a, p. 111; Mauritzen *et al.* 2003b, p. 123). Results show strong fidelity to activity areas that are used over multiple years (Ferguson *et al.* 1997, p. 1,589). Not all geographic areas within an individual polar bear's home range are used each year. The distribution patterns of some polar bear populations during the open water and early fall seasons have changed in recent years (Durner *et al.* 2006, p. 30; Durner *et al.* 2009a, pp. 49, 53). In the Beaufort Sea, for example, greater numbers of polar bears are being found on shore during the fall than recorded at any previous time (Schliebe *et al.* 2006, p. 559).

Terrestrial Denning Habitat

Unlike brown bears and black bears, which hibernate in winter when food is unavailable, polar bears are able to forage for seals throughout the winter (Amstrup 2003, p. 593). Polar bears are highly evolved with respect to survival during periods of food deprivation. During food shortages, they are able to shift their metabolism into a hibernation-like pattern, but still remain active. Generally, only pregnant polar bears routinely enter dens in the fall for extended periods (however, *see* Messier *et al.* 1994 and Ferguson *et al.* 2000a). Typically, pregnant female polar bears go into the dens in November, give birth in late December, and emerge from their dens after the cubs have reached 9.1–11.4 kg (20–25 lbs) in March or April (Ramsay and Stirling 1988, p. 602). In Alaska, cubs stay with their mother for 2 years after departing the den (Amstrup 2003, p. 599).

Polar bears are particularly vulnerable to anthropogenic and natural disturbances during denning compared to other times in their life cycle (Amstrup 2003, p. 606) because they are more limited in their ability to safely move away from the disturbance. The cubs, which are born in mid-winter, weigh only 600–700 g (1.3–1.5 lbs), and are blind, lightly furred, and helpless (Blix and Lentfer 1979, p. R67). The maternal den provides a relatively warm, protected, and stable environment until they are large enough (approximately 11.4 kg (25 lbs)) to survive conditions outside the den in March or April. The dens provide thermal insulation, and if the family group abandons the den early, the cubs will die (Blix and Lentfer 1979, p. R67; Amstrup and Gardner 1994, p. 7). Throughout the species' range, most pregnant female polar bears excavate dens in snow located on land in the fall and early winter period (Harington 1968, p. 6; Lentfer and Hensel 1980, p. 102; Ramsay and Stirling 1990, p. 233; Amstrup and Gardner 1994, p. 5). The only known exceptions are in western and southern Hudson Bay, where polar bears first excavate earthen dens and later reposition into adjacent snow drifts (Jonkel *et al.* 1972, p. 146; Ramsay and Stirling 1990, p. 233), and in the southern Beaufort Sea, where a portion of the population dens in snow caves located on the drifting pack ice and shore-fast ice (Amstrup and Gardner 1994, p. 5). Successful denning by polar bears requires accumulation of sufficient snow for den construction and maintenance and insulation for the female and cubs. Adequate and timely snowfall combined with winds that cause snow accumulation leeward of requisite topographic features create denning habitat (Harington 1968, p. 12).

In addition, for bears moving from the sea ice to land, the timing of freeze-up and the distance from the pack ice are two factors that can affect when pregnant females enter dens. Access to terrestrial denning sites is dependent upon the location of the sea ice, amount of stable ice, ice consolidation, and the length of the melt season during the summer and fall (Fischbach *et al.* 2007, p. 1,395). The Alaskan southern Beaufort Sea and the Chukchi-Bering Seas polar bear populations typically remain with the sea ice throughout the year. During the fall, when the sea ice is at its minimum extent, the parturient females begin to look for suitable denning sites in relatively close proximity to the sea-ice edge. The closest terrestrial denning sites to the ice edge in the Chukchi Sea during the late fall are Wrangel Island, Russia, and the northern coastline of the Chukotka Peninsula, Russia. Polar bears from the Chukchi-Bering Seas population have typically used terrestrial den sites in Russia because accessibility to potential terrestrial denning habitat in western Alaska is not possible due to the great distance polar bears would have to swim. In the future the distance between the Chukchi Sea ice edge and western Alaska is expected to increase due to changes in the sea-ice characteristics (described below in the section *Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring*) from climate change.

A great amount of polar bear denning arctic-wide occurs in core areas, which show high use over time (Harington 1968, pp. 7–8). Examples include the west coast of Hudson Bay in Canada and Wrangel Island in Russia (Harrington 1968, p. 8; Ramsey and Stirling 1990, p. 233). In some portions of the species' range, polar bear dens are more dispersed, with dens scattered over larger areas at lower density (Lentfer and Hensel 1980, p. 102; Stirling and Andriashek 1992, p. 363; Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 5; Messier *et al.* 1994, p. 425; Born 1995, p. 84; Ferguson *et al.* 2000a, p. 1125; Durner *et al.* 2001, p. 117; Durner *et al.* 2003, p. 57). In northern Alaska, while denning habitat is more diffuse than in other areas, certain areas such as barrier islands, river banks, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning (Durner *et al.* 2004, entire; Durner *et al.* 2006a, entire).

The primary denning habitat for polar bears in the southern Beaufort Sea population is on the relatively flat topography of the coastal area on the North Slope of Alaska and the pack ice (Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 7; Durner *et al.* 2001, p. 119; Durner *et al.* 2003, p. 61; Fischbach *et al.* 2007, p. 1,400). Some of the habitat suitable for the accumulation of snow and use for denning has been mapped on the North Slope (Durner *et al.* 2001, entire; Durner *et al.* 2006a, entire). The primary denning areas for the Chukchi-Bering Seas population occur on Wrangel Island, Russia, where up to 200 bears per year have denned annually, and the northeastern coast of the Chukotka Peninsula, Russia (Stishov 1991a, p. 107; Stishov 1991b, p. 91; Ovsyanikov 2006, p. 169). The key characteristic of all denning habitat is topographic features that catch snow in

the autumn and early winter (Durner *et al.* 2003, p. 61). As in the Canadian arctic, Russia, and Svalbard, Norway (Harington 1968, p. 12; Larsen 1985, p. 322; Stishov 1991b, p. 91; Stirling and Andriashek 1992, p. 364), most polar bear dens in Alaska occur relatively near the coast along the coastal bluffs and river banks of the mainland and barrier islands and on the drifting pack ice (Amstrup and Gardner 1994, p. 5; Amstrup 2003, p. 596).

Previous Federal Actions

We listed the polar bear as a threatened species under the Act on May 15, 2008 (73 FR 28212). At the time of listing, we determined that critical habitat for the polar bear was prudent, but not determinable. We concluded that, given the complexity of determining which specific areas in the United States might contain physical and biological features essential to the conservation of the polar bear under rapidly changing environmental conditions, we required additional time to conduct a thorough evaluation and coordinate with species experts. Thus, we did not propose critical habitat for the polar bear at that time. We issued a final special rule for the polar bear under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) on December 16, 2008 (73 FR 76249). The special rule provides measures that are necessary and advisable to provide for the conservation of the polar bear.

On July 16, 2008, the Center for Biological Diversity, Natural Resources Defense Council, and, Greenpeace, Inc., filed an amended complaint against the Service for, in part, failing to designate critical habitat for the polar bear concurrently with the final listing rule [*Center for Biological Diversity et al.* v. *Kempthorne et al.,* No. 08–2113- D.D.C. (transferred from N.D. Cal.)]. On October 7, 2008, the U.S. District Court for the Northern District of California entered an order approving a stipulated settlement of the parties. The stipulated settlement, in part, required the Service, on or before June 30, 2010, to submit to the **Federal Register** a final critical habitat determination for the polar bear. On March 24, 2010, the U.S. District Court for District of Columbia approved the stipulation extending the deadline for submission of the final critical habitat designation to the **Federal Register** to November 23, 2010. The Service issued the proposed rule for the designation of critical habitat for the polar bear in the United States on October 29, 2009 (74 FR 56058). We also published a document making available the draft economic analysis of the proposed critical habitat designation on May 5, 2010 (75 FR 24545). For more information on previous Federal actions concerning the polar bear, refer to the final listing rule and final special rule published in the **Federal Register** on May 15, 2008 (73 FR 28212), and December 16, 2008 (73 FR 76249), respectively.

Summary of Comments and Recommendations

We requested written comments from the public during two comment periods on the proposed rule to designate critical habitat for the polar bear in the United States. The first comment period, which was associated with the publication of the proposed rule (74 FR 56058), opened on October 29, 2009. That comment period was open for 60 days, closing on December 28, 2009. We also requested comments on the proposed critical habitat designation and associated draft economic analysis (DEA) during a 60-day comment period that opened May 5, 2010, and closed on July 6, 2010 (75 FR 24545). During the comment periods we also contacted appropriate Federal, State, and local agencies; Alaska Native organizations; and other interested parties and invited them to comment on the proposed rule to designate critical habitat for the polar bear in Alaska and the associated DEA.

In response to requests from the public, public hearings were held in Anchorage, Alaska on June 15, 2010, and Barrow, Alaska on June 17, 2010. These hearings were announced in the **Federal Register** on May 5, 2010 (75 FR 24545), and a legal notice of the hearings was published in the Legal Section of the Anchorage Daily News (June 1, 2010). Three display ads announcing the hearings on proposed critical habitat were published on June 10, 2010, in the Arctic Sounder (Barrow, Alaska), Nome Nugget (Nome, Alaska), and Anchorage Daily News (Anchorage, Alaska). A fourth display ad was published in the Anchorage Daily News on June 14, 2010. We established teleconferencing capabilities for the Barrow, Alaska, public hearing to allow outlying villages the opportunity to provide oral testimony. The communities of Kotzebue and Little Diomede participated in this public hearing via teleconference. The public hearings were attended by approximately 73 people.

In addition, information on the proposed critical habitat was presented at the Inuvialuit Game Council and North Slope Borough meeting on April 29, 2009, in Barrow, Alaska; the Alaska Nanuuq Commission Meeting on August 25–26, 2009, in Nome, Alaska; and the North Slope Borough on March 1, 2010, in Barrow, Alaska.

During the public comment periods, we received approximately 111,690 comments, including letters and post cards, citizen petitions, e-mail or web messages, and public hearing testimony. We received comments from Federal agencies, Alaska Native Tribes and tribal organizations, Federal commissions, State and local governments, commercial and trade organizations, conservation organizations, non-governmental organizations, and private citizens.

A majority of the comments received (99 percent) supported the proposed designation of critical habitat for polar bears in Alaska. The range of comments varied from those that provided general supporting or opposing statements with no additional explanatory information to those that provided extensive comments and information supporting or opposing the proposed designation. All substantive information provided during both comment periods has been considered in this final determination and, where appropriate, has been incorporated directly either into this final rule or the final economic analysis, or is addressed below.

Comments on the October 29, 2009, proposed rule (74 FR 56058) and subsequently on the DEA varied considerably, from those that questioned the need for the critical habitat designation to those that stated the proposed critical habitat designation did not provide enough protection for the polar bear. Many of the comments focused on the need to include or exclude additional habitat from the proposed critical habitat designation.

Some comments suggested that the Service should increase the proposed designated critical habitat to include: (1) Areas currently unoccupied or marginal, as they may become more important as habitat is lost due to climate change; (2) large areas required to maintain connectivity between essential habitats; or (3) increased terrestrial denning habitat required due to the loss of suitable sea-ice denning habitat.

Other comments suggested that our proposed critical habitat designation was too large, and that specific areas should be excluded: (1) For economic reasons; (2) for reasons of national security; (3) due to the presence of existing management plans that adequately protect polar bears and their habitat; or (4) because the designated critical habitat areas did not contain the primary constituent elements (PCEs) required for polar bear survival and recovery.

All substantive information provided during the comment periods on the proposed rule has either been incorporated directly into this final determination, incorporated into the final economic analysis, or addressed below. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation for the polar bear, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with polar bear, the geographic region in which it occurs, conservation biology principles, and the subsistence and cultural needs of Alaska Native people. We received responses from two of the peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the polar bear. These comments, which were aggregated by subject matter, are summarized and addressed below and are incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: One peer reviewer commented that the list of eight factors influencing polar bear use of habitats is appropriate and covers the main points. Missing from the discussion is the issue that age, sex, and reproductive status may also affect polar bear use of habitats. Evidence of spatial segregation and habitat preference for bears of different groups is available in the literature, although it is not well studied.

Our response: We agree and have acknowledged in this final rule that habitat use can vary with respect to age, sex, and reproductive status.

Comment 2: One peer reviewer suggested the Service should change the scientific name of the ringed seal to *Pusa hispida,* from the more commonly used name *Phoca hispida.*

Our response: We concur. The generic name for the ringed seal has been moved back and forth between the genus *Pusa* and *Phoca* in recent decades. Although the designation of *Pusa hispida* is not universal, we defer to the classification of the species as found in the Integrated Taxonomic Information System, which places this species in the genus *Pusa.*

Comment 3: One peer reviewer suggested the Service provide supporting documentation for the statement that the energetic demands of polar bears are the greatest during the winter season.

Our response: We agree and have removed the statement from the rule, as there is no scientific information to support our assumption.

Comment 4: One peer reviewer noted that the more recent studies on polar bear evolution in sea-ice habitats push the divergence date between brown (grizzly) bears and polar bears to somewhere between 1.3–2.3 million years (Yu *et al.* 2007, p. 8; Arnason et *al.* 2007, p. 870), although the reviewer recognized that Krause *et al.* (2008, p. 4) urged caution on the time of divergence.

Our response: We disagree, as the most recently reported date of divergence for the brown bear and polar bear lineage is estimated to be between 110,000 and 130,000 years before present (Lindqvist *et al.* 2010, p. 5,053).

Comment 5: In the section regarding adaptations unique to polar bears, one peer reviewer suggested that the Service should mention polar bear behavioral and physiological adaptations such as their walking hibernation (serum urea to creatinine ratio) and winter activity. These adaptations allow polar bears to remain active in winter, unlike, for instance, Grizzly bears in Alaska, which all hibernate in winter.

Our response: We agree and have acknowledged in the Background section of this rule that among bear species in the United States that occur in Alaska, winter activity and walking hibernation are unique to polar bears. Polar bears are highly evolved with respect to survival during periods of food deprivation. Polar bears are able to alter their metabolism by shifting into a hibernation-like metabolic pattern during food shortages. During these periods, active polar bears are able to metabolize their fat similar to hibernating polar bears.

Comment 6: One peer reviewer suggested the Service note that sea ice can also "form over" the shallower waters of the continental shelf due to freezing temperatures, and it is not necessary that the ice must be transported to the location as a naïve interpretation may suggest.

Our response: We agree and have made the necessary changes to the text of this final rule.

Comment 7: One peer reviewer noted that the only issue of critical habitat not explicitly addressed is the use of areas farther offshore than the 300 m (984 ft) bathymetric contour. Also, some commenters noted that offshore areas in deeper waters are currently used by polar bears in the southern Beaufort Sea and are increasing in importance as summer refugia. Thus, inclusion of these areas should be considered. The reviewer also noted that data on the use of these areas are available and in the context that polar bears can be considered a migratory species, it is important to consider the connectivity of all habitats used by the species.

Our response: While we acknowledge polar bears temporarily use ice over deeper waters when ice is absent from the shallower waters over the continental shelf, we believe the ice over deeper waters does not contain the biological features of the sea ice that are essential to the conservation of the polar bear, such as access to ice seals, to be considered critical habitat. We base this on the work of Durner *et al.* (2004, p. 17), which shows that polar bears stay almost entirely over the shallower waters of the continental shelf. In terms of providing a migratory corridor, see our response to comment 28 of the public comments below.

Comment 8: One peer reviewer suggested that the statement, "typically, polar bears tend to avoid humans," should include some reference to polar bear use of human refuse dumps and attraction to camps due to attractants (*e.g.,* food smells).

Our response: We agree and changed the statement to reflect potential anthropogenic attractants (*e.g.,* subsistence-harvested whale carcasses, landfills).

Comment 9: One peer reviewer questioned the statement that ice-breaking activities may favorably alter essential features and in turn allow easier access to ringed seals by polar bears. The reviewer said that the statement is speculative and, without a reference, is unwarranted. There is no literature supporting ice breaking as allowing easier access, and access is only important if it allows an increase in kill rate. This is an unsubstantiated claim of benefit.

Our response: We agree that there is no literature supporting ice breaking as allowing easier access to seals. We base our statement on our observation of polar bears investigating the broken ice path behind a U.S. Coast Guard icebreaker. In addition, we feel we have qualified the statement by the use of the word "may".

Comment 10: One peer reviewer noted that the term Chukchi and Bering Seas population is used in the text, but the Chukchi and Bering Seas population is named the Chukchi Sea (or Alaska and Chukotka) population according to the IUCN Polar Bear Specialist Group.

Our response: We agree that differing terms may cause confusion and will use the term Chukchi-Bering Seas population to describe this population consistently throughout the text of this final rule. Using the names of the seas where the population resides has been a common naming convention used for the Arctic polar bear populations.

Comment 11: With regard to the statement in the proposed rule, "As the summer sea ice edge retracts to deeper, less productive Polar Basin waters, polar bears will face increasing competition for limited food resources, increasing distances to swim with increased energetic demands * * *", one peer reviewer suggested the Service provide clarification as to the reason why polar bears need to swim.

Our response: We added text where appropriate to provide clarification on the reason polar bears will likely encounter increasing distances over which they will need to swim as the summer sea-ice edge recedes beyond the continental shelf.

Comment 12: One peer reviewer stated that the following assertion we made needs further documentation: that shelter den importance may increase in the future if polar bears, experiencing nutritional stress as a result of loss of optimal sea-ice habitat and access to prey, need to minimize nonessential activities to conserve energy.

Our response: We believe it is reasonable to infer that a potential increase in nutritional stress may lead to an increase in the importance of shelter dens to the species. In addition, we believe we have sufficiently qualified the statement and provided appropriate support for our assertion (see Physical and Biological Features section of this final rule for a further discussion of this).

Public Comments

Comments Related to the Need To Designate Critical Habitat and the Primary Constituent Elements (PCEs)

Comment 13: Many commenters questioned the need to designate critical habitat for the polar bear. One commenter asserted that the Service did not adequately document or explain the basis for its assumption that the polar bear critical habitat designation is "not expected to result in additional significant conservation measures." The commenter asserted that if this is the case, then there is no need to designate critical habitat for the polar bear.

Another commenter stated that if the Department of the Interior's projection of climatic warming is accurate, then the areas essential for polar bear conservation would be outside the United States (*i.e.,* the Canadian Archipelago). They stated that polar bears will likely be gone from Alaska in 50 years, and, as a result, designation of critical habitat areas in Alaska is not essential to the survival and future conservation of polar bears.

Our response: According to section 4(a)(3)(A) of the Act, the Service has a statutory obligation to designate critical habitat for endangered and threatened species to the maximum extent prudent and determinable. Further, as a result of a lawsuit filed by the Center for Biological Diversity, Natural Resources Defense Council, and Greenpeace, Inc., we were ordered by the court to designate critical habitat if prudent for the polar bear. In the final rule listing the polar bear as a threatened species (May 15, 2008, 73 FR 28212) and our proposed rule to designate critical habitat (October 29, 2009, 74 FR 56058), we determined that the designation of critical habitat for the polar bear is prudent. Therefore, we are required to designate critical habitat for the polar bear to fulfill our legal and statutory obligations.

Given the current conservation measures under section 7 of the Act and the Marine Mammal Protection Act (MMPA), we believe that the designation will not result in significant additional conservation measures. However, critical habitat designation increases the protections afforded a listed species by focusing attention on the species' habitat needs, and by ensuring that Federal agency actions do not destroy or adversely modify designated areas.

Although the Alaska populations are predicted to decline by mid-century due to loss of sea ice habitat from climate change, polar bears are expected to exist in Alaska in reduced numbers. In addition, it is possible that actions taken now to reduce the anthropogenic contribution of greenhouse gases could slow the current trend in sea ice decline, particularly during the second half of the century. Therefore, it is important to protect the essential polar bear habitats in Alaska.

Comment 14: Several commenters suggested that the following PCE should be added: unobstructed access to, and absence of disturbance from humans and human activity on the sea ice and barrier islands.

Our response: We believe that the barrier island PCE as described in this critical habitat designation adequately provides polar bears unimpeded access to sea ice and barrier islands. We base our assertion on our experience that a 1.6 km (1 mi) buffer has provided adequate protection for known dens from human activities, and the study (Anderson and Aars 2008, p. 503) that indicated that females with cubs are sensitive to noise disturbance at distances of approximately 1.6 km (1 mi). Thus, the no-disturbance zone surrounding the barrier islands should adequately protect polar bears denning, resting, or moving along the coastal barrier islands from human disturbance. With respect to the sea-ice habitat, we believe that the overall level of human disturbance would be very low, especially given the remoteness, relatively low level of human activity, and extent of the designated sea-ice habitat (over 400,000 km^2 (154,000 mi^2)).

Comment 15: Several commenters suggested that the sea ice PCE is too narrowly defined as simply the ice itself and currently omits biological features essential to the conservation of polar bears. They suggest the Service consider including in the PCE: the ice seals (primarily ringed and bearded seals) upon which polar bears prey, the quality of the water column under the ice, and the biotic community in the water column that supports the relatively short Arctic food chain. They note that declines in seal pupping have resulted in well-documented declines in polar bears.

Our response: Section 3(5)(A)(i) of the Act defines critical habitat to include areas within the geographical area occupied by the species on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Throughout our discussion of critical habitat, we have highlighted the importance of ice-dependent seals to polar bears and the importance of sea ice to polar bears for normal feeding behavior. The sea ice PCE is intended, in part, to identify habitat that supports polar bear prey and normal feeding behavior. Therefore, we have added text to the sea ice PCE stating that the sea-ice habitat includes adequate prey resources (primarily ringed and bearded seals) to support polar bears. We believe that the ability of sea-ice habitat to support polar bear prey and normal feeding behavior reflects the quality of the water column under the sea ice and the quality of the biotic community that supports the Arctic food chain.

Comment 16: One commenter recommended that we conduct additional research and denning surveys along the Chukchi Sea coast to reassess the coastal region for its potential as critical habitat and determine the effects

on the population as habitat loss issues arise.

Another commenter suggested the Service should include terrestrial denning areas along the Chukchi Sea coast in western Alaska to protect occupied and unoccupied denning habitat that may become more important with the predicted loss of sea-ice habitat and the stress of over-hunting.

Our response: The Service acknowledges that terrestrial denning habitat containing the appropriate topographic, and some macrohabitat, features occur in areas west of Barrow, Alaska. However, we have added access via sea ice to the terrestrial denning habitat PCE because large expanses of open water and the timing of ice freeze-up can prohibit polar bear access to den sites. For example, denning does not occur on Hopen Island, the southernmost island of Svalbard, Norway, when freezing of the sea ice occurs too late, which precludes access to den sites (Derocher *et al.* 2004, p. 166). In addition, Fischbach *et al.* (2007, p. 1,402) concluded that terrestrial denning is restricted by greater open water fetch. Few bears have been documented to den in areas west of Barrow, Alaska (U.S. Geological Survey unpublished data). Historically, polar bears from the Chukchi/Bering Seas population have not had access to denning habitat in western Alaska because at the end of the summer sea melt season large expanses of open water separate the bears from western Alaska. Thus, they have used terrestrial denning sites on Wrangel Island and the Chukotka Peninsula, areas that are in proximity to the sea-ice edge, when the sea ice is at its minimum extent in the fall. Presumably, energetic demands limit the ability of pregnant polar bears to swim great distances. Therefore, access from summer foraging habitats to available terrestrial denning habitats would be limited to areas with fall sea-ice access. Thus, we added access to suitable terrestrial denning habitat to the terrestrial denning habitat PCE. Consequently, we have determined that the areas in western Alaska do not contain the specific features essential to the conservation of polar bears for terrestrial denning habitat and did not designate critical habitat in western Alaska.

The Service is currently conducting research on the Chukchi-Bering Seas polar bear population. We will continue to evaluate the importance of these areas in the future as new information becomes available.

Comment 17: Many commenters, including the State of Alaska, indicated that the area proposed for critical habitat designation is too large and should be reduced based on a spatial-temporal analysis and designated on a seasonal basis or should be dynamic to reflect the changing ice conditions throughout the year or even between years. They stated that areas with less than 15 percent sea-ice concentration do not contain the physical and biological features essential for the conservation of polar bears, and that the Service doesn't explain why special management measures may be needed for sea-ice habitat, as that area is basically uninhabited and inhospitable to humans. They added that most of the area is currently unmanaged. Another commenter suggested that the Service should develop a system for determining when sea-ice conditions meet the three criteria of (a) greater than 50 percent ice concentration, (b) near leads, open water, or ephemeral polynyas, and (c) water depths less than 300 m (984 ft).

Our response: The Service evaluated the potential for incorporating specific seasonal and geographical parameters when designating the sea-ice critical habitat, but we determined that the extreme variability and dynamic nature of the sea ice, especially in the face of climate change, made it difficult and impractical to partition the sea-ice habitat into meaningful seasonal and geographic units. In addition, according to our implementing regulations (50 CFR 424.12(c)), critical habitat boundaries should be clearly defined for the public. A changeable boundary that was defined based on the seasonal presence of sea-ice would not provide the clarity or certainty to the public and stakeholders as to which areas are included in critical habitat. It also may be in conflict with our regulations which state that we are to define the specific areas, and then delineate and describe those areas in the regulation of the rule-making. Further, specific case law has clarified that the critical habitat need not contain the essential features at all times or be used consistently by the species, but rather can be used temporally during migration, movement, denning, or other life history functions (*Arizona Cattle Grower's Ass'n* v. *Salazar,* 606 F. 3d 1160 (9th Cir. 2010)). We believe that spatial-temporal considerations can be evaluated as appropriate for individual projects on a case-by-case basis. In addition, Federal agencies and potential stakeholders, such as the oil and gas industry, that may need to consult based on the designation of critical habitat, need well-defined boundaries for planning purposes. Planning projects and assessing impacts would be very difficult if the boundaries of critical habitat were constantly changing. One of the educational benefits of a critical habitat designation is that it provides certainty to consulting agencies on the location and extent of critical habitat.

In response to the second comment on the potential need for special management considerations, section 3(5)(A)(i) of the Act states that the physical and biological features essential to the conservation of the species "may" require special management considerations or protections. The Act does not state that those features *must* require such management or protection. Nonetheless, the Service believes that special management considerations may be necessary due to the expansion of offshore oil and gas operations and the absence of the following: updated oil spill response plans that adequately deal with polar bears and their habitat; demonstrated methods for effective oil spill clean up in the broken sea-ice conditions in the Arctic; and adequate quantities of oil spill equipment to protect critical habitat. An oil spill in Alaska similar to the recent catastrophic oil spill from the Deepwater Horizon rig in the Gulf of Mexico would be even more difficult to control and clean up effectively due to the extreme Arctic conditions, limited resources available locally, and the difficulty of accessing these very remote areas particularly during winter.

Comment 18: One commenter suggested that the Service should create an adaptive framework to incorporate a rolling inland boundary for the terrestrial critical habitat to account for any Beaufort Sea coastal erosion caused by climate change.

Our response: Jones *et al.* (2009, p. 2) determined that coastal erosion along a 64-km (40-mi) stretch of the Beaufort Sea has more than doubled since the mid-1950s to a rate of 13.7 meters per year (m/yr) (45 feet per year(ft/yr)) between 2002 and 2007. In our assessment of the foreseeable future in the 2008 polar bear listing rule, we determined that 45 years was a reasonable timeframe based on the reliability of data to assess the threats of climate change and the ability to assess the impact of these threats on polar bear populations. Using 2050 as the foreseeable future based on the predicted loss of sea-ice habitat for the Chukchi-Bering Seas and the southern Beaufort Sea populations (Amstrup *et al.* 2008, p. 231) and assuming the rate of coastal erosion (14 m/yr, 46 ft/yr) in the Beaufort Sea between 2002 and 2007 (Jones *et al.* 2009, p. 2) did not change,

we determined that approximately 0.545 km (0.3 mi) of the coast would be lost by 2050. Following further evaluation based on the public comment, we decided that the method we used to determine the inland boundary of the terrestrial denning habitat provides a zone wide enough to compensate for changes due to coastal erosion. As new information becomes available, we will continue to monitor the situation to determine if additional special management considerations are needed.

In addition, according to our implementing regulations (50 CFR 424.12(c)), critical habitat boundaries should be clearly defined for the public. A changeable boundary that was defined based on extent of coastal sea erosion at any particular point in time would not provide the clarity or certainty to the public and stakeholders as to which areas are included in the critical habitat designation at that time. It also may be in conflict with our regulations which state that we are to define specific areas, and then delineate and describe those areas in the regulation of the rule-making.

Comment 19: One commenter thought that the proposed critical habitat designation is based on the premise that polar bears need vast areas of solitude. The commenter further stated that polar bears do not need vast areas of solitude as evidenced by congregations around whale carcasses.

Our response: Although polar bears may opportunistically feed on whale carcasses, as stated in the proposed rule, their primary prey is ice-dependent seals, which are widely distributed in sea ice covering the continental shelf. The distribution and movements of polar bears in the United States are closely tied to the seasonal dynamics of sea-ice extent as it retreats northward during summer melt and advances southward during autumn freeze. Sea ice disappears from the Bering Sea and is greatly reduced in the Chukchi Sea in the summer, and polar bears occupying these areas move as much as 1,000 km (621 mi) to stay with the retreating pack ice (Garner *et al.* 1990, p. 222; Garner *et al.* 1994, pp. 407–408). Average activity areas of females in the Chukchi-Bering Seas population (244,463 km^2, range 144,659–351,369 km^2 (94,387 mi^2, range 55,852–135,664 mi^2)) (Garner *et al.* 1990, p. 222) were more extensive than those in the Beaufort Sea population (166,694 km^2, range 14,440–616,800 km^2 (64,360 mi^2, range 21,564–52,380 mi^2)) (Amstrup *et al.* 2000b, p. 960). These figures illustrate the large areas typically occupied by polar bears. Thus, the designation is based not on the need for solitude but on the activity patterns of polar bears, which demonstrate that they need vast areas of sea ice to pursue the prey upon which they depend.

Comment 20: One commenter mentioned that the details of the denning habitat in the Barrow area are not defined, so it is difficult to determine where the actual denning areas are.

Our response: The designation of critical habitat is not intended to identify actual denning sites but rather to offer protection to the essential features that support denning habitat. The U.S. Geological Survey (USGS) verified the denning habitat mapped between Barrow, Alaska, and the Kavik River, Alaska, during the fall of 2010. Once the detailed denning habitat has been field verified and peer reviewed, information on the detailed denning site habitat from Barrow, Alaska, to an area approximately 32.2 km (20 mi) east of the Colville River will be available to the public. This will not change the critical habitat designation, but rather will give the public more detailed information about the location of specific den site features within the habitat.

Comment 21: Two commenters suggested that the Service should discuss the potential for contaminants other than hydrocarbons, in particular persistent organic pollutants that may adversely affect polar bear habitat.

Our response: A summary of the persistent organic pollutants (POPs) is discussed in the final rule listing the polar bear as a threatened species under the Act (May 15, 2008, 73 FR 28290). In that rule, we stated that many of the POPs are transported to the Arctic via large rivers, air, and ocean currents from more southerly latitudes and end up in the Arctic marine environment, including the sea ice and adjacent terrestrial habitats. In that rule, we also determined that, although contaminants may become a more significant threat in the future for polar bear populations experiencing declines related to nutritional stress brought on by changes in the sea ice, contaminants did not currently threaten polar bears or their habitat in Alaska.

Comment 22: Several commenters indicated that the Service should consider the effects of habitat fragmentation and should keep large areas of protected habitat in the designation as these will provide the most valuable protection as polar bears try to adapt to the changing climate.

Our response: The designated critical habitat occurs as contiguous zones along the coastline in northern and western Alaska within the range of the southern Beaufort Sea and the Chukchi-Bering Seas populations. The area chosen maintains the connectivity of the habitat and accounts for the changes of the dynamic sea-ice habitat both in time and space. Therefore, we believe that we have adequately designated significantly large patches of habitat that will facilitate movements between feeding areas, den sites, and resting areas and that will support the survival and recovery of the species.

Comments Requesting Inclusions to the Proposed Critical Habitat Designation

Comment 23: The Service received numerous comments to protect all the areas that polar bears occupy in the United States. Commenters argued that areas currently unoccupied or marginal may take on greater importance in the future as prime habitat is lost.

Our response: Using the best scientific information available, we have determined that the critical habitat areas that we are designating are sufficient for the conservation of polar bears in Alaska. As stated in the final listing rule, further global warming is "largely set" through mid-century because of GHGs already present in the atmosphere, the GHGs likely to be emitted over the next several decades, and interaction among climate processes. With this warming the polar bear's sea-ice habitat will continue to decline. In the final listing rule, we predicted that the polar bear populations in Alaska likely will decline significantly by mid-century (May 15, 2008, 73 FR 28241). However, polar bears are expected to exist in Alaska in reduced numbers. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for polar bear life history requisites into the future.

Comment 24: Several commenters supported the inclusion of the large area currently proposed due to the extensive inter-annual variation in the distribution of the different sea ice habitat types and the large areas used by polar bears each year. They indicated that such areas are required to prevent polar bears themselves from becoming endangered and for recovery.

Our response: We agree. Polar bears have large home ranges, and although they may use only a portion of a home range in a given year, based on sea-ice cover, they show a strong fidelity to activity areas that are used over multiple years. There is also evidence that polar bears use the sea-ice habitat differently based on age, sex, and reproductive status (Stirling *et al.* 1993, p. 20). It is important that the connectivity of these habitats remain

intact to maintain the functional integrity of these habitats for polar bears (Webster *et al.* 2002, p. 77). In addition, the dynamic nature of the sea ice with respect to extent and quality necessitates that large areas of sea ice are required for the survival and recovery of the species. For example, the ice in the Chukchi and Bering seas may move over 1,287 km (800 mi) between the maximum and minimum extents each year.

Comment 25: The Service received comments that the area of no-disturbance should be increased to provide additional protection from human disturbance when these habitats are used for resting and denning around the barrier islands.

Other commenters suggested that the no-disturbance zone was not required because polar bears do not need these areas for resting or movement corridors as human activities have occurred in these areas without any discernable impacts and polar bears are capable of successfully denning in close proximity to human activity.

Our response: Polar bears may find the habitat conditions on Barrier Islands (Unit 3) suitable for denning or resting but are unlikely to use these habitats if disturbed by the presence of humans. Denning females typically seek secluded areas away from human activity. Thus, the functional usefulness of this habitat requires an area that is free from human disturbance. Based on the documented responses of polar bears to human disturbance, we believe that the proposed no-disturbance zone of 1.6 km (1 mi) as described in the proposed critical habitat rule (October 29, 2009, 74 FR 56058) is sufficient to maintain the functional integrity of the suitable barrier island habitat for resting, denning, and movements along the coast.

Comment 26: Several commenters recommended the Service should increase the terrestrial denning habitat adjacent to the Beaufort Sea inland for one or more of the following reasons: (1) To account for Beaufort Sea coast erosion by climate change; (2) because polar bears are increasingly using terrestrial versus sea-ice habitat for denning in response to climate change; and (3) to provide a greater buffer from disturbance. We received one recommendation to use the upper 95-percent confidence interval reported by Anderson and Aars (2008), which would extend the inland boundary of the terrestrial denning habitat 2.8 km (1.7 mi). In addition, we received many comments to include 100 percent of the den sites and the entire coastal plain of the Arctic National Wildlife Refuge in the terrestrial denning critical habitat.

Our response: We believe the method developed by USGS that we used to identify critical and essential maternal den habitat on the North Slope coastal plain of Alaska is valid, and the best available information, because it: (1) Is designed to capture a robust estimation of the inland extent of the den use; (2) is a straightforward, unbiased method for estimating the area in which 95 percent of the maternal dens are located inland perpendicular to the coastline; (3) accurately represents polar bear denning concentrations in the zone from the United States-Canadian border to the Kavik River and the zone from the Kavik River to Barrow, Alaska, along the northern coast of Alaska; and (4) uses an 8-km (5-mi) concentric band that functionally identified a zone wide enough to account for potential changes likely to occur to this area due to climate change, including coastal erosion. Polar bears have occasionally denned up to 80 km (50 mi) inland, but this is a relatively rare occurrence as a majority of the bears have been documented to den relatively close to the coast (further explanation included in response to comment 42). We wanted to capture the areas where polar bears actually den and believe that the methods used, including the use of 95 percent of maternal dens located by telemetry and verified as confirmed or probable (Durner *et al.* 2009b, p. 4), accurately capture the major denning areas and, therefore, the features essential to polar bear denning habitat.

Comment 27: Several commenters suggested the Service should include areas outside the United States that polar bears currently occupy based on what scientific data indicate may be necessary to facilitate the species' adaptation to climate change.

Our response: Although the Service recognizes that terrestrial denning habitat on Wrangel Island and the Chukotka Peninsula, Russia, exist, we lack the legal authority to designate critical habitat outside the United States and its territories. According to our implementing regulations at 50 CFR 424.12(h), "Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction."

Comment 28: The Service received several comments suggesting that areas proposed for extension should include sea-ice habitat beyond the 300-m (984-ft) isobath out to 321 km (200 mi) or up to the U.S. Exclusive Economic Zone (EEZ) zone in northern Alaska. They suggest that the Service increase the sea-ice habitat designated as critical habitat to acknowledge that these areas are likely to be important to the movements and migration of polar bears and that in the future these areas are likely to shift significantly in response to changing sea-ice availability.

Our response: We do not anticipate that polar bears would remain long in the ice-covered areas over deep water of the central basin in the southern Beaufort Sea. This is based on the premise that ringed and bearded seals, the species on which polar bears primarily feed, would not remain in these areas but rather would remain primarily in the shallower waters over the continental shelf in the absence of nearshore sea ice (Stirling *et al.* 1982, p. 13; Kingsley *et al.* 1985, p. 1,209). Also, designating sea ice beyond the 300-m (984-ft) isobath up to the EEZ zone in northern Alaska is not necessary to protect polar bears' ability to disperse to new habitats via the sea ice over the central basin in the southern Beaufort Sea.

Comments Requesting Exclusions to the Proposed Critical Habitat Designation

Comment 29: Several commenters suggested exclusion of areas outside of the proposed designated critical habitat.

Our response: Requests for exclusion of areas that occur outside the boundaries proposed for designation as critical habitat were not considered further, because these areas were not covered by the designation as they were determined not to contain the essential features or be essential themselves.

Comment 30: Several commenters indicated that there is no information that would justify excluding any proposed areas from the final critical habitat designation under section 4(b)(2) of the Act.

Our response: We do not agree with this hypothesis. The Secretary has exerted his discretion, under section 4(b)(2) of the Act, to exclude the Native communities of Barrow and Kaktovik, located along the coast in northern Alaska adjacent to the Beaufort Sea, which are within the boundaries of the proposed critical habitat designation, because the benefits of exclusion outweigh the benefits of inclusion, and the failure to designate these areas will not result in extinction of the species. Please refer to the section below entitled Exclusions Under Section 4(b)(2) of the Act for a more detailed discussion of this exclusion.

Comment 31: One commenter noted that the proposed critical habitat included at least one island that no longer exists in one of the river deltas on the North Slope.

Our response: The Service's proposed critical habitat was drawn in part from USGS topographic maps that were produced in 1955, and some of the barrier islands present in 1955 have since eroded. The loss of this small island since 1955 illustrates the ephemeral nature of the barrier islands, particularly in river deltas, which are constantly moving due to erosion and deposition from winds, currents, and the ice. We expect some islands will disappear and others may form in response to the changing climate conditions. Because data indicate that polar bears will use these islands when present, for denning, refuge from human disturbance, and movements along the coast to access maternal den and optimal feeding habitat, we determined that they are an essential feature. Therefore, new barrier islands that form are considered an essential feature of critical habitat for the polar bear. Individual projects proposed on any barrier island and their associated spits within the range of the polar bear in the United States, and the water, ice, and terrestrial habitat within 1.6 km (1 mi) of these islands, will be evaluated on a case-by-case basis with respect to section 7 of the Act.

Comment 32: The Service received comments to exclude areas in which oil and gas exploration, development, production, and transportation activities are occurring or are planned in the future.

Our response: The existing manmade structures within critical habitat, including those within oil fields, do not contain the essential features for polar bears, are not essential themselves, and therefore do not meet the definition of critical habitat. As a result these features are not included in the final designation of critical habitat; they have been textually excluded because of the mapping scale of the designation.

Because of the uncertainty of activities at the leasing stage, the lack of management plans in place to specifically protect polar bear habitat, and the potential for negative impacts to polar bear critical habitat in these extremely large areas, we believe that there may be conservation benefits to the polar bear if large areas such as the Beaufort Sea Proposed Program Area (2007–2012) and the Chukchi Sea Proposed Program Area (2007–2012) remain in the designation. Inclusion of the areas associated with the oil and gas industry as part of the polar bear critical habitat would allow for section 7 consultations to occur for both polar bears and polar bear critical habitat. Therefore, the Secretary has decided not to exercise his discretion to exclude from critical habitat the areas within the current and proposed lease sale areas. However, as noted above, existing manmade structures within the oil fields are not included within the critical habitat designation.

Comment 33: Several commenters requested that manmade structures (e.g., seawalls, docks, pipelines) be excluded, because they occur in very limited areas, and generally do not contain the physical or biological features essential to the conservation of the species.

Our response: We agree and are not including existing manmade structures in the final critical habitat designation, because these structures do not contain the essential features for polar bears, nor are they essential themselves. Examples of manmade structures not included are houses, gravel roads, airport runways and facilities, pipelines, central processing facilities, saltwater treatment plants, well heads, pump jacks, housing facilities or hotels, generator plants, construction camps, pump stations, stores, shops, piers, docks, jetties, seawalls, and breakwaters. Existing manmade structures are excluded wherever they occur within the critical habitat designation, regardless of landownership or whether these structures are on or off shore.

Comment 34: Several commenters, including the State of Alaska, suggested that town sites within communities (generally the core areas where people live) be excluded from critical habitat. Other commenters suggested that in addition to excluding the core areas of human habitation there should be adequate funding and cooperative plans to reduce human-bear interactions in these communities.

Our response: We recognize the perceived conflict in designating critical habitat in areas with ongoing programs to deter polar bears from the area based on safety concerns for both people and bears. The Secretary has exerted his discretion to exclude the communities of Barrow and Kaktovik, the only two Alaska communities, from the final critical habitat designation (see Exclusions under Section 4(b)(2) of the Act below). The North Slope Borough provided the village district boundaries and the legal descriptions of those boundaries for the North Slope communities of Barrow and Kaktovik.

In response to the second part of the comment, the Service has been actively working with the Arctic National Wildlife Refuge and local residents in the village of Kaktovik to reduce bear-human interactions. Accomplishments to date have included setting up a Kaktovik polar bear committee, acquiring funds through tribal grants, conducting bear patrols, conducting safety and bear deterrence training, developing safety guidelines, and the developing polar bear viewing guidelines. The Service is expanding this effort to more communities as resources allow.

Comment 35: Several comments requested that we exclude from the designation lands immediately surrounding the inhabited communities to allow for economic growth and expansion. One commenter suggested a 32-km (20-mi) radius around Barrow, and others suggested adding a buffer of a 1.6-km (1-mi) radius around all coastal villages and organized municipalities to account for the human disturbance. Specific communities mentioned in the comments include Barrow, Kivalina, Kotzebue, Nome, Wainwright, and Kaktovik.

Our response: Currently there is no overlap with the critical habitat designation and the communities west of Barrow. Consequently, there will be no conflicts with town expansion in these areas. Only the North Slope communities of Barrow and Kaktovik overlap with the proposed critical habitat designation, and these communities have been excluded from the final designation (see Exclusions under Section 4(b)(2) of the Act below). In addition, the legal boundaries that define Barrow are larger than the currently developed areas and thus provide for town expansion. New construction on private land outside the town boundaries would only require section 7 consultation with the Service if Federal funding or a Federal permit was required. However, consultation does not mean that new construction could not occur, but would mean that impacts to polar bear critical habitat would need to be considered. In addition, as explained in the Criteria Used to Identify Critical Habitat section below, existing manmade structures are not included in the critical habitat designation.

Comment 36: The Service received a few comments that suggested the industrial area of Deadhorse be excluded from critical habitat.

Our response: Deadhorse is treated differently than the Alaska Native communities with respect to exclusion for the following reasons: (1) Very few permanent residents live in Deadhorse and very few if any families live there; Deadhorse is primarily a staging area for materials and personnel working in activities associated with the oil and gas operations; (2) Deadhorse is not an incorporated city and thus has no legally delineated boundaries; (3) movements of personnel and equipment

are highly restricted, unlike residents in the villages; (4) polar bears are hazed from actively used areas but are allowed to exist in the areas between the widely dispersed network of roads, pipelines, well pads, and buildings; and (5) there is very little polar bear critical habitat in the vicinity of Deadhorse and the airport. Therefore, the Secretary has decided not to exercise his discretion to exclude Deadhorse from the polar bear critical habitat designation. However, removal of existing manmade structures from the designation will effectively remove most of the core human activity area of Deadhorse from the critical habitat designation.

Comment 37: We received comments that recommended the exclusion of all Native-owned lands (including those owned by Native and Village corporations, local governments, and Native allotments) from the critical habitat designation. The commenters also noted that the corporation lands are for the perpetual benefit of its shareholders.

Our response: The Secretary has exerted his discretion to exclude the town site areas of Barrow and Kaktovik (see Exclusions under Section 4(b)(2) of the Act below). In addition, any existing manmade physical structures, including those owned by the Native communities, are not included in the designation. However, with respect to the large areas of undeveloped land owned by the Native and Village corporations, because of the uncertainty of future development, we have determined that future activities are speculative at this time. Any future activities that may affect polar bears, and, if there is a Federal nexus, polar bear habitat, would be addressed through section 7 of the Act. In addition there are educational benefits of informing land managers of areas that are essential to polar bears for any projects that involved a Federal nexus. Therefore, the Secretary has decided not to exercise his discretion to exclude Native Village and Corporation lands that are not currently developed.

Comment 38: While there is currently no large-scale coal mining operations other than the Red Dog Mine in the proposed critical habitat, there is the potential for future operations in both northern and western Alaska. Several commenters stated that the economic limitations to potential future coal mining in these areas due to the designation of critical habitat should be justification to remove these areas from the critical habitat.

Our response: The designated polar bear critical habitat does not overlap with areas containing the coal deposits on the North Slope or the western coal fields in Alaska. Therefore, these lands are not being considered for exclusion from the designated polar bear critical habitat.

Comment 39: The U.S. Air Force (USAF) requested exemption of Department of Defense (DOD) lands from the critical habitat designation under section 4(a)(3)(B)(i) of the Act, specifically, radar sites that overlap with southern Beaufort Sea and the Chukchi-Bering Seas polar bear populations. These sites are: Wainwright Short Range Radar Site (SRRS); Point Barrow Long Range Radar Site (LRRS); Oliktok LRRS; Bullen Point SRRS; Barter Island LRRS; Cape Lisburne; Kotzebue LRRS; Tin City LRRS; Point Lonely (former SRRS); Point Lay (former LRRS); West Nome Tank Farm (former LRRS); and Cape Romanazof (LRRS). The USAF requested the exemption of these radar sites based in part on the critical role these sites play as part of the Alaska Radar System in support of the Alaska North American Aerospace Defense Command (NORAD) Region and Homeland Defense to detect, track, report, and respond to potentially hostile aircraft approaching our borders and entering our airspace.

Our response: There are two sections of the Act that provide mechanisms for evaluating DOD lands in relation to critical habitat: section 4(a)(3)(B)(i) and section 4(b)(2). Section 4(a)(3)(B)(i) of the Act states, "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." Section 4(b)(2) of the Act allows the Secretary to use his discretion to exclude areas from critical habitat for reasons of national security if the Secretary determines the benefits of such an exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

The USAF has submitted two integrated natural resource management plans (INRMPs), one for the Inactive and one for the Active Radar Sites prepared under section 101 of the Sikes Act (16 U.S.C. 670a) for review. After careful review of the INRMPs, we find that the plans adequately address measures to protect polar bears and therefore provide a benefit to the species. As a result, the five sites that overlap with the proposed polar bear critical habitat designation, Point Lonely (former SRRS), Point Barrow LRRS, Oliktok LRRS, Bullen Point LRRS, and Barter Island LRRS, are exempt from the polar bear critical habitat designation pursuant to section 4(a)(3) of the Act (see Exemptions below).

Comment 40: The Bureau of Land Management (BLM) has requested the Secretary to exercise his authority under section 4(b)(2) of the Act to exclude the area within the National Petroleum Reserve—Alaska (NPR–A) based on increased agency costs without coincident increase to polar bear conservation or recovery.

Our response: The BLM's Alaska State Office proposes to lease tracts for oil and gas exploration and development during Fall of 2010. The BLM prepared two integrated activity plans (IAPs), one for the northeast planning area and the other for the northwest planning area of NPR–A. The NPR–A area overlaps with all three designated units of critical habitat for polar bears in Alaska. Each IAP has stipulations and required operating procedures (ROPs) that afford some protection to coastal areas, rivers, and barrier islands that contain the majority of the PCEs for polar bear critical habitat. Because the exact extent, location, and timing of developments, and their resulting effects, are not known, we are unable to determine if the stipulations and ROPs are adequate. In addition, there is an exception clause in both IAPs for the stipulations and ROPs. The exception clause states that exemptions could be granted if: (1) The alternative proposed by the lessee or permittee fully satisfies the objectives of the Lease Stipulation or ROP; (2) compliance with the stipulation or ROP would not be technically feasible; (3) compliance with the stipulation or ROP would be economically prohibitive; or (4) the proposed alternative is environmentally preferable. Because of the lack of specificity, and the exceptions, in the IAPs, the Secretary has decided not to exercise his discretion to exclude from critical habitat the areas within the current and proposed lease sales that are not currently developed. However, as discussed throughout this final rule, existing manmade structures are exempt from the final critical habitat designation because they do not contain features essential to polar bears, nor are they themselves essential to the species.

Comment 41: The State of Alaska and other commenters suggested that areas where polar bears occur infrequently should be excluded from the designated

critical habitat. Areas that have been suggested for exclusion are Norton Sound, Barrier Islands from Norton Sound to Hooper Bay, interior of St. Lawrence Island, and the Seward Peninsula.

Our response: Telemetry data and periodic polar bear sightings by coastal residents indicate that polar bears occur in all of these areas. For example, during the period from July to September 2001, 50 bears were stranded on St Lawrence Island during the summer and most were legally killed by local subsistence hunters. The fact that polar bears may use these areas infrequently does not mean that these areas do not contain the features essential to the conservation of polar bears. To the contrary, in the recent decision of *Arizona Cattle Grower's Assoc.* v. *Salazar,* 2009 U.S. App. Lexis 29107 (June 4, 2010), the Ninth Circuit affirmed that the Service has the authority to designate as "occupied" areas all areas used by a listed species with sufficient regularity that members of the species are likely to be present during any reasonable span of time. Therefore, the Secretary has decided not to exercise his discretion to exclude from critical habitat the areas where polar bears occur infrequently.

Comment 42: We received comments that the denning habitat was overly broad and should be limited to those areas that specifically provide suitable den site habitat. It was suggested that denning habitat be limited to just those areas that have the physical and biological features for den sites as indicated by USGS. Another comment questioned the need to designate critical habitat for denning 32 km (20 mi) inland east of the Canning River when 67 percent of denning occurred within 8 km (5 mi) of the coastline and 83 percent occurred within 16 km (10 mi) of the coast.

Our response: As indicated in the October 29, 2009, proposed rule, the denning habitat consists of more than just the physical characteristics that allow for construction of a den site. Polar bears need the ability to access potential den sites and areas to acclimate the cubs after den emergence in the spring. Pregnant females often inspect and partially excavate several den sites prior to choosing the one that they will ultimately use. If a female polar bear abandons her den due to disturbance prior to the cubs being old enough to survive outside the den, her cubs will die. Therefore, females often seek secluded denning areas to give birth and raise their cubs. There is considerable denning habitat on the North Slope but polar bears do not use this randomly. Polar bears prefer coastal bluffs and river banks within close proximity to the sea ice for den sites. Choosing den sites close to the coast allows females to access feeding areas before and after denning and reduces the energy expenditure and risks of predation on cubs by wolves (Ramsay and Stirling 1984, pp. 693–694) during long walks from den sites located further inland.

There are several factors that support the designation of the area in which 95 percent of denning occurs: (1) There is uncertainty associated with the fine-scale mapping of the potential den site areas based on the physical characteristics of the topography on the North Slope. For instance, verification of known den sites within the mapped denning habitat was more accurate for bluff habitat than in relatively flat tundra areas with low relief; (2) the terrestrial core denning area was based on the locations of a limited number of radio-collared female polar bears. In any given year approximately 20–40 dens are located via telemetry, but that is a small subset of the total number of females (approximately 240) thought to be denning in any one year from the southern Beaufort Sea population; (3) only a portion of the potential denning habitat on the North Slope has been mapped; and (4) additional benefits are provided through section 7 consultation on polar bear habitat as well as polar bears. Rather than designate the entire known denning habitat on the North Slope, we believe that the area encompassing 95 percent core denning areas as identified in this final rule best describes and contains the physical and biological features for polar bear denning that are essential to the conservation of the species.

Comment 43: Several commenters, including the State of Alaska, noted that not all barrier islands have suitable topography for denning or other essential polar bear habitat features or activities. They suggested that the Service evaluate the relative conservation value of each barrier island and include only those that are important.

Our response: We recognize that not all barrier islands have suitable denning habitat. However, barrier island habitat is not used just for denning; it is also important for other essential life history functions such as refuge from human disturbance and for movements along the coast to access dens and optimal feeding areas. As a consequence, we have determined that barrier islands are a physical feature essential to the conservation of the polar bear.

Comments on the Effects of the Proposed Critical Habitat Designation

Comment 44: Several commenters, including the State of Alaska, expressed concern that the designation of critical habitat will interfere with the subsistence harvest and the current practice of moving subsistence-harvested whales away from communities and hunting camps to reduce adverse bear-human interactions.

Our response: The designation of critical habitat for polar bears in Alaska will not affect subsistence harvest of polar bears or the movement of whale carcasses away from communities for safety reasons. Section 10(e) of the Act states, "Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—(A) any * * * Alaskan Native who resides in Alaska * * * if such taking is primarily for subsistence purposes." Subsistence harvest is specifically exempt under the Act and the MMPA and, as such, will not be affected by the designation of critical habitat. The practice of moving whale carcasses taken for subsistence purposes away from the villages is in the best interest of both polar bears and humans. Further, there is no Federal nexus to these activities as described, and thus a section 7 consultation would not be required.

Comment 45: We received comments that the designation of critical habitat will adversely affect the Service's working relationship with the Alaska Native community, industry, and the State of Alaska. These comments also expressed concern about the effect from multiple layers of critical habitat designations (for different species) on the local people.

Our response: The Marine Mammals Management Office of the Service has worked closely with Alaska Native communities for many years through the Alaska Nanuuq Commission, North Slope Borough, and local communities to discuss management and conservation issues concerning polar bears and subsistence uses. The Native community has been instrumental in assisting us with scientific studies; contributing to the success of the Marking, Tagging and Reporting Program; managing the southern Beaufort Sea population through the Inuvialuit/Inupiat Agreement of 1988; and more recently in the formation and implementation of the U.S./Russia Bilateral Agreement for the Conservation of the Alaska/Chukotka

Polar Bear Population. The working relationships that we have developed over the past 20 plus years have often provided the framework for other Service field offices and other agencies wishing to work in Alaska Native communities.

The Service has also been working with the oil and gas industry for more than 20 years to minimize bear-human interactions through the Beaufort Sea and the Chukchi Sea Incidental Take Program.

The effects of a critical habitat designation are evaluated for each species and each designation on a case-by-case basis because of the conservation needs of different species, and geographic regions are subject to different baseline regulations and conservation requirements. As such, following compliance with Executive Order 12866 and the Regulatory Flexibility Act, we are to evaluate the effects of the individual designation alone to determine the incremental effect of that designation itself, not the cumulative effects of the designation in question and those already in place. However, the establishment of critical habitat does not, on its own, prohibit development of any kind. It simply ensures consultation with Federal action agencies on actions that may affect designated critical habitat if a Federal nexus in the project exists. Therefore, we do not expect that the designation of the critical habitat for polar bears in Alaska, as mandated by the Act, will jeopardize the working relationships that we have developed over the past 20 years.

Comments on Special Management Considerations

Comment 46: Several commenters recommended that the Service develop standards and guidelines for monitoring activities that potentially affect critical habitat, develop coordinated strategies to address the negative effects of climate change, and develop policies to assist polar bears responding to the predicted loss of sea-ice habitat.

Many of the comments supporting our polar bear critical habitat suggested that actions should not only be taken to reduce greenhouse gas emissions, but also to develop alternate sources of energy.

Our response: The Service is moving aggressively to address the challenges of climate change. We have drafted a Strategic Plan for Climate Change that focuses on adaptation, mitigation, and engagement with partners to seek solutions to the challenges to fish and wildlife. Created in concert with the strategic plan is a 5-year action plan that outlines tasks that the Service will pursue to address climate change. One way the Service is already taking action is through the creation of Landscape Conservation Cooperatives (LCCs). Polar bear habitat falls within the Arctic LCC. The LCCs are management-science partnerships that inform integrated resource-management actions addressing climate change and other stressors within and across landscapes. They will link science and conservation delivery. The LCCs are true cooperatives, formed and directed by land, water, wildlife, and cultural resource managers, and interested public and private organizations.

In concert with the LCCs are the establishment of Climate Science Centers (CSCs) that will deliver basic climate-change-impact science to LCCs within their respective regions, including physical and biological research, ecological forecasting, and multi-scale modeling. These CSCs will prioritize their delivery of fundamental science, data, and decision-support activities to meet the needs of the LCCs. This includes working with the LCCs to provide climate-change-impact information on natural and cultural resources and to develop adaptive management and other decision-support tools for managers. The Alaska Climate Science Center, located at the University of Alaska, Anchorage, was established in March 2010, and is one of the first in the nation. The Service is on the forefront in addressing the challenges of climate change and will be relying on the Arctic LCC and the Alaska Climate Science Center to inform the best conservation practices for polar bears in the future.

In response to the suggestion that the Service develop standards and guidelines for monitoring activities that potentially affect critical habitat, the Service has identified in general, and to the extent practicable, those actions that may require consultation under the Act. It is not possible at this time to forecast what specific activities will occur in, or the potential impact of these activities to, the critical habitat. The mechanism for evaluating effects of proposed actions is through section 7 consultation under the Act.

Comment 47: One commenter requested that the Service analyze whether special management measures or protections are needed, and was concerned that special management considerations and protections that may result from section 7 of the Act were omitted from the proposed rule.

Our response: The special management considerations and protections in the proposed rule were included for example purposes. The specific types of management actions, such as reasonable and prudent measures to minimize incidental take, will be determined on a case-by-case basis during the section 7 process. We have presented some potential special management measures or protections below in this final rule (see the Special Management Considerations or Protections section of this rule). The Service will continue to evaluate whether additional special management considerations and protections may be needed in the future.

Comment 48: The Service received numerous comments that the effects of oil and gas development throughout the Arctic are underestimated, and when combined with the loss of sea-ice habitat, the importance of terrestrial and nearshore habitat for resting and denning will increase. Commenters further suggested that there is a need for a moratorium on oil and gas activities until a comprehensive plan based on sound science and traditional knowledge, which addresses the full potential impact of industrial activities, is in place. They suggest these actions would minimize the potential negative impacts of oil and gas development on polar bear critical habitat. As an example, the commenters cited the decision by the North Pacific Fishery Management Council to prohibit fishing in the Arctic until more science can be gathered.

Our response: Although these comments are not directly applicable to the designation of critical habitat, the Service recognizes the importance of obtaining and using the best available science to make decisions regarding oil and gas development relative to management of polar bears. Under section 7(a)(2) of the Act, Federal agencies must consult with the Service on any action with a Federal nexus (an action authorized, funded, or carried out by any Federal agency) that may affect critical habitat, and must avoid destroying or adversely modifying critical habitat. The prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species, or of unoccupied areas that are essential for the conservation of the species, are not appreciably reduced. These actions may further be evaluated under the standards of the MMPA.

Comment 49: The Service received recommendations to establish guidelines for determining the types, proximity, level, and timing of activities and impacts that may adversely modify

critical habitat. They suggested that the proposed critical habitat determination takes an initial step in this direction by generally identifying activities that may affect critical habitat under three categories of actions: (1) Those that would reduce the availability or accessibility of polar bear prey species, (2) those that would directly impact a PCE, or (3) those that would render critical habitat areas unsuitable for use by polar bears. However, they suggest the very general discussion in the proposed designation is neither sufficient to assure the conservation of polar bears, nor helpful to those engaged in activities within or in proximity to designated critical habitat.

Our response: The Service has identified in general, and to the extent practicable, those actions that may require consultation under the Act (see Application of the "Adverse Modification" Standard section of this rule). It is not possible at this time to forecast what specific activities will occur and the potential impact of these activities to the critical habitat. The mechanism for evaluating effects of proposed actions is through section 7 consultation under the Act.

Comments on Regulatory Mechanisms

Comment 50: We received numerous comments that the MMPA; Clean Water Act (CWA) (33 U.S.C. 1271 *et seq.*); Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*); Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*); Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*); Alaska Coast Management Plan (ACMP); Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*); Federal and State regulations; and North Slope Borough (NSB) statutes, regulations, and ordinances, (*see* EIS Lease Sale 193 for larger list) adequately address management of sea-ice habitat, and that, therefore, there is no need for the critical habitat designation.

Our response: The Service has reviewed the existing regulatory mechanisms at the international, national, State, and local level and has determined that there are no known regulatory mechanisms that are directly and effectively addressing reductions in the sea ice at this time. For example, regulations under the MMPA effectively deal with protection for polar bears but do not specifically protect polar bear habitat such as sea ice. Moreover, as affirmed by various courts (*e.g., Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp.2d 1074, 1078 (D. HI. 1998)), the Act imposes an independent statutory duty on the Service to designate critical habitat, regardless of how that habitat is managed under other statutory or regulatory regimes.

Additional discussion concerning the adequacy of regulatory mechanisms can be found in the final listing rule published in the **Federal Register** on May 15, 2008 (73 FR 28212).

Comment 51: The State of Alaska commented that some of the areas proposed for designation as critical habitat are currently managed effectively through land-use planning, permitting, and mitigation measures by the State, and thus do not meet the need of the second part of the definition of critical habitat, as they are already protected. They further commented that these areas, therefore, do not require additional special management considerations or protection. Another comment indicated the State regulatory mechanisms, specifically the CZMA and the Alaska Department of Natural Resources (ADNR) Area Plans, were adequate.

Our response: The definition of critical habitat in section 3(5)(A) of the Act specifies that we are to designate specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The Act does not specify that the essential features require special management consideration or protections. In *Center for Biological Diversity et al.* v. *Norton* 240 F.Supp.2d 1090 (D. Ariz. 2003) the court determined that to exclude areas where adequate management or protections are already in place is arbitrary, and that the existence of other habitat protections does not relieve the Service from designating critical habitat. According to the Court, what is determinative is whether or not the habitat is essential to the conservation of the species and special management of that habitat is possibly necessary.

We acknowledge the efforts by the State to provide management protections that benefit listed species and their habitat in some of the areas proposed for critical habitat designation for polar bears. However, these areas meet the definition of critical habitat under the Act. Whether the habitat requires additional special management because some protections may already exist under State of Alaska law does not determine whether that habitat meets the definition of "critical habitat" under the Act. The protections provided under State law provide additional support to the Service's assertion that special management considerations or protections may be necessary (*see Center for Biological Diversity et al.* v. *Norton* 240 F.Supp.2d 1090 (D.Ariz. 2003)).

The CZMA was created to "preserve, protect, develop, and where possible restore or enhance the resources of the Nation's coastal zone." The CZMA provides for the submission of a State program subject to Federal approval. Under the CZMA in Alaska, there are four District Coastal Management Plans that apply to polar bears in northern and western Alaska (The North Slope Borough, Northwest Arctic Borough, City of Nome, and Bering Straits CRSA). Of these four Alaska Coastal Management Programs, only the City of Nome has an active plan in effect. The plans are not considered to be effective at this time for protecting polar bear habitat.

Under the Submerged Lands Act, the State of Alaska has authority over the submerged lands and resources therein, up to, but not above, the mean high tide line, and from the coast, extending seaward for 5.6 nautical-kilometers (3 nautical-miles (nm)). The ADNR Beaufort Sea Area-wide 10-year Best Interest Finding for sea ice and coastal waters within 4.8 km (3 mi) seems to be focused on the leasing phase and does not provide any site-specific analysis of the impacts of oil and gas exploration, development, and production and thus provides no meaningful protection to polar bears and their habitat. Therefore, ADNR Area Plans do not provide protections that are specifically designed to address degradation, loss, or disturbance to polar bear habitat.

In addition, polar bears and their habitat are not included in the State's Endangered Species Act and as such receive no protection under this statute. Thus, the designation of critical habitat under the Act provides for protection of critical habitat in the absence of adequate protection of habitat under State of Alaska statutes (State Endangered Species Act, ADNR Area Plans, and the CZMA).

Therefore, the areas managed by the State of Alaska qualify as critical habitat under the Act, and the existing management practices for these areas are not a substitute for Federal critical habitat designation. Because these areas contain the features essential to polar bear conservation, they meet the definition of critical habitat and we are required by statue to designate them as critical habitat.

Comments on Procedural and Legal Compliance—Process of Designating Critical Habitat

Comment 52: One commenter stated that: (1) The Alaska quota for parks, preserves, monuments, and wild and scenic rivers has been met under Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*); (2) section 1326(a) specifically states that administrative closures, including the Antiquities Act, of more than 2,023 hectares (ha) (5,000 acres (ac)) can no longer be used in Alaska and that if a larger area is administratively withdrawn: "Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress"; and (3) that under section 1326(b), "No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress."

Our response: The designation of critical habitat for polar bears does not increase the amount of land under Federal jurisdiction and does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, nor does it allow the government or public to access private lands. Therefore, the designation of critical habitat is not in violation of any provision of ANILCA.

Comment 53: One commenter noted that portions of the terrestrial denning areas are designated as wilderness under Federal jurisdiction and as such do not need additional protection.

Our response: Although areas with wilderness status may afford some protection to endangered and threatened species, the purpose of designating these areas as "wilderness" is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." The purpose of designating critical habitat for a particular species is to identify and provide Federal protection for features and areas essential to the conservation of that species, in order to facilitate its conservation. Designation of critical habitat would ensure any Federal actions not restricted in wilderness areas are evaluated under section 7 of the Act, so that if approved, they would not appreciably diminish the functionality of the habitat's essential features.

Comment 54: We received several comments that the Service should consult directly with all Native communities potentially affected by the critical habitat designation.

Our response: The Service has a history of coordinating with Native communities regarding polar bear management issues, and has conducted extensive outreach relative to this critical habitat designation with Alaska Native organizations and communities within the range of the polar bear in Alaska. Although the court-ordered deadline precluded extensive coordination with the Alaska Native community prior to proposing to designate critical habitat, we presented general information regarding the designation of polar bear critical habitat at the Inuvialuit Game Council and North Slope Borough meeting on April 29, 2009, in Barrow, Alaska, and at the Alaska Nanuuq Commission Meeting on August 25–26, 2009, in Nome, Alaska. Following the release of the proposed critical habitat designation on October 29, 2009 (74 FR 56058), we attempted to notify all potentially affected Native communities and local and regional governments, and we requested comments on the proposed rule. In response to a specific request by the North Slope Borough, we presented information on the polar bear critical habitat on March 1, 2010, in Barrow, Alaska. At that meeting, attendees were given the opportunity to comment on the proposal. As noted earlier, we published a document in the **Federal Register** on May 5, 2010 (75 FR 24545), announcing the proposed designation of critical habitat, the availability of the draft economic analysis, and another 60-day comment period. We also notified the primary communities located within the range of polar bear in Alaska by mail of the opportunity to provide oral or written comments prior to the public hearings in Anchorage on June 15, 2010, and Barrow on June 17, 2010. In addition, the Alaska Nanuuq Commission, which represents Alaska Native interests concerning the conservation and subsistence use of polar bears, assisted in notifying the villages about the proposed critical habitat designation through their village representatives. We responded to all requests for additional information from various organizations and communities before and after submitting the proposed rule to designate critical habitat to the **Federal Register**. The Service remains committed to working with Alaska Natives on this and other issues regarding conservation and subsistence use of polar bears in Alaska.

Comment 55: The Service received comments that we should hold public hearings in more than one community in northern and western Alaska.

Our response: Section 4(b)(5)(E) of the Act states that the Secretary shall "promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice." The Service offered multiple opportunities for people to participate in public hearings and meetings. We held two public hearings: one in Anchorage, Alaska, on June 15, 2010, and one in Barrow, Alaska, on June 17, 2010. These public hearings were announced in the **Federal Register** on May 5, 2010 (75 FR 24545) and in the Legal Section of the Anchorage Daily News (June 1, 2010). In addition, three display advertisements announcing the hearing on critical habitat were published on June 10, 2010, in the Arctic Sounder (Barrow, AK) and Nome Nugget (Nome, AK), and on June 10 and 14, 2010, in the Anchorage Daily News (Anchorage, AK). We established teleconferencing capabilities for the Barrow, Alaska, public hearing to provide an opportunity to receive oral testimony from outlying communities. The communities of Kotzebue and Little Diomede participated in this public hearing via teleconference. The public hearings were attended by approximately 73 people.

In addition, general information on critical habitat was presented at the Inuvialuit Game Council and North Slope Borough meeting on April 29, 2009, in Barrow, Alaska; the Alaska Nanuuq Commission Meeting in Nome, Alaska, in August 2009; and the North Slope Borough on March 1, 2010, in Barrow, Alaska. We believe these accommodations provided sufficient time and means for the public to comment on the proposed rule.

Comment 56: One commenter suggested the Service prepare an environmental impact statement (EIS) as part of National Environment Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) compliance.

Our response: It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). The opportunity

for public comments, one of the goals of NEPA, is provided for through section 4 rulemaking procedures.

Comment 57: A comment provided by the North Slope Borough states that critical habitat designation is subject to consistency determinations under the Coastal Zone Management Act.

Our response: Under the regulations implementing the Coastal Zone Management Act, agencies are to examine "reasonably foreseeable direct and indirect effects on any coastal use or resource" when determining whether or not a consistency determination is necessary (15 CFR 930.33(a)(1)). Because the designation of an area as critical habitat does not itself negatively impact the way in which the land is being utilized, nor does such a designation directly affect the coastal zone of Alaska, we conclude that a consistency determination is not required. Consistency determinations will continue to be required for specific Federal activities that use or impact the coastal zone in a reasonably foreseeable manner, such as construction projects, permitting, and other development.

Comments on the Economic Analysis

General Comments on Methodology and Results

Comment 58: Several commenters, including the State of Alaska, asserted that the Service did not adequately document or explain the basis for its assumption in the draft economic analysis (DEA) that the polar bear critical habitat designation is "not expected to result in additional significant conservation measures." The comment further states that the Service did not adequately consider the economic impacts of consultations, project requirements, and modifications that the adverse modification standard imposes.

Our response: Section 2.3 of the DEA describes the reasons the Service does not anticipate this critical habitat designation to result in significant additional polar bear conservation requirements above and beyond those currently in place under MMPA and through the species being listed under the Act. Additionally, Appendix C of the DEA includes a memorandum developed by the Service, titled, "Incremental Effects of Critical Habitat Designation for the Polar Bear," describing the Service's reasoning on this issue. In general, conservation measures being implemented for the polar bear and its habitat under the MMPA, along with the conservation resulting from the species' listing status under the Act, are expected to sufficiently avoid potential destruction or adverse modification of critical habitat.

Comment 59: One comment contends that the Service-provided assumptions that critical habitat will not change conservation requirements for the polar bear led to the finding in the DEA that there will be no incremental effects of the designation. The comment states that a lack of change in conservation requirements does not mean that the only added costs are administrative costs of consultations. In particular, litigation over critical habitat could lead to added costs.

Our response: Changes in conservation requirements following critical habitat designation for the polar bear represent only one of the categories of potential incremental effects considered in the DEA. The DEA recognizes the potential for other types of incremental impacts, such as project delay associated with litigation. Specifically, section 3.2.2 of the DEA focuses on potential "indirect" impacts of the designation, which are defined as the unintended consequences of the regulation. Forecasting specific variables needed to quantify indirect impacts, for example, the outcome of potential litigation and the frequency and timing of any project delays, is considered too speculative for the analysis. Information is therefore provided in the DEA regarding precedence for, and the potential magnitude of, such impacts using hypothetical examples. The potential for the designation to result in additional, indirect costs is highlighted throughout the DEA as the chief source of uncertainty in the analysis.

Comment 60: One comment states that the DEA incorrectly concludes that critical habitat designation will require no more mitigation than that required by the listing alone. The comment notes, for example, that additional measures to protect the cactus ferruginous pygmy-owl were required following critical habitat designation. The comment further provides examples of expenses being incurred for conservation of threatened species in the North Slope, including fencing to protect eiders, and utilization of polar bear-resistant dumpsters.

Our response: Conservation measures for species and habitats are determined by the Service on a case-by-case basis as different species and geographic regions are subject to different baseline regulations and conservation requirements. The question of whether the baseline regulatory environment sufficiently avoids destruction or adverse modification of critical habitat for the polar bear is independent of the same question for another species, such as the cactus ferruginous pygmy owl. Ongoing polar bear conservation measures, such as the utilization of polar bear-resistant dumpsters, are discussed in the DEA as baseline conservation measures, and are accordingly expected to continue regardless of critical habitat designation.

Comment 61: One commenter questioned why costs of compliance with baseline regulations are provided when the DEA acknowledges that they are not relevant to the evaluation of critical habitat.

Our response: The DEA does not explicitly quantify total costs of compliance with baseline regulations. The DEA does, however, include a discussion of the regulatory baseline in order to provide context for the incremental analysis. For example, the Service's determination that the regulatory baseline precludes the need for additional polar bear conservation measures following critical habitat designation is a major factor in the economic analysis.

Comments on Section 7 Consultation Costs

Comment 62: Multiple comments were received that assert that the DEA underestimates the administrative costs of consultation. In particular, these comments suggest that the estimated section 7 administrative costs to third parties are unreasonably low. These comments focus specifically on oil and gas-related consultations and provide a range of incremental costs that oil and gas companies are expected to bear for participating in consultation regarding polar bear critical habitat. One comment states that the Act requires demonstration that adverse modification or destruction of critical habitat would not occur, and that developing a factual record to demonstrate this could be costly. Multiple comments suggest that incremental administrative costs of consultation should include staff time, consultant fees, legal advice, and development of habitat-related studies for large-scale oil and gas projects. One commenter estimated third-party, incremental administrative costs of $10,000 per consultation where another commenter suggested it could be "millions of dollars" per consultation. Multiple comments provided on the DEA agree on an estimated $18,750 to $37,500 per consultation, and two other comments provide estimates within that range.

Our response: In response to these comments, third-party, incremental administrative costs of consultation are

revised in the final economic analysis (FEA). Specifically, section 1.3.2 of the FEA revises the estimates of administrative consultation costs for oil and gas projects and plans as follows: (1) To assume third parties do bear some administrative costs during programmatic consultation at the low end (the DEA originally assumed only the Service and Federal agencies participate in programmatic consultation); and (2) to incorporate a high-end estimate of $37,500 for costs to third parties for participation in formal and programmatic consultations. These changes result in the estimate of total incremental administrative costs of consultation being revised from $669,000 in the DEA to a range of $677,000 to $1.21 million in the FEA (present values assuming a 7 percent discount rate).

Comment 63: Two comments state that costs to oil and gas companies for biological assessments would be increased following critical habitat designation. One comment suggests this would result in incremental costs of $10,000 to $50,000 per biological assessment or, for large-scale projects, up to $1.5 million. This comment also suggests that, in addition to the increased biological assessment costs, each consultation effort would require a $300,000 study to determine that the primary constituent elements (PCEs) for polar bear critical habitat exist in the project area. Another commenter suggests that critical habitat designation will result in reinitiation of two past biological opinions related to oil and gas operations in order to consider impacts to critical habitat, and that the administrative costs of these reinitiations would result in an additional $156,000 for one biological opinion and $137,500 for another to determine and map the presence of PCEs. The commenter also asserts that oil and gas companies will bear incremental costs when developing biological assessments as designated non-Federal representatives in section 7 consultation. The commenter estimates these efforts will result in an additional $115,600 per biological assessment, and an additional $10,000 to $650,000 (depending on the project area) to document whether the PCEs are present and whether the project will destroy or adversely modify those PCEs.

Our response: Exhibit 1–2 of the FEA describes estimated incremental costs for biological assessments of $1,400 per consultation, or $2,800 for a consultation reinitiated to consider critical habitat. The expected level of effort for these studies in the DEA is based on a historical review of past consultations around the country, and is significantly less than the level of effort that these comments anticipate will be required. The Service does not ask that third parties identify or map the distribution of PCEs as part of section 7 consultations. The Service identifies as part of critical habitat designation where the PCEs for polar bear critical habitat exist. It is, therefore, unlikely that there would be a need for third parties to undertake duplicative efforts to map PCEs. The Service has in the past requested polar bear-related studies such as denning surveys; however, these studies are required under the MMPA and would be requested regardless of the designation of critical habitat. Costs of these polar bear studies are considered baseline impacts of polar bear conservation and are not included within the forecast of incremental impacts of critical habitat designation.

Comment 64: Two comments note that the estimated administrative consultation costs in the DEA rely on data from Service field offices around the country, and assert that the only consultations appropriate as indicators of future administrative costs are those which involve Alaska and the polar bear.

Our response: Exhibit 1–2 of the FEA summarizes the estimated administrative costs of consultation regarding polar bear critical habitat. The analysis does not rely on past consultations on polar bear in Alaska as indicators of future administrative costs because consultations that have occurred considered only the listing of the species (*i.e.,* the jeopardy standard). As critical habitat has not yet been designated for the polar bear in Alaska, historical data does not exist regarding administrative costs to specifically consider critical habitat for the species (*i.e.,* the adverse modification standard). The administrative cost estimates in the DEA therefore rely on the best available information. As described in the notes to Exhibit 1–2, the estimates of costs to the Service were provided by the Fairbanks Fish and Wildlife Field Office and are therefore specific to the polar bear in Alaska. The costs to Federal agencies are average estimates based on review of section 7 consultations around the country. The costs to third parties in the FEA are revised from the DEA estimates to incorporate information provided during public comment on expected administrative costs of consultations specifically regarding polar bear critical habitat.

Comment 65: One comment notes that, under the Cooperative Agreement Between United States Department of Interior and Alaska Department of Fish and Game for Conservation of Endangered and Threatened Animals (February 1979), the State of Alaska will participate at some level in all section 7 consultations concerning critical habitat. These costs should also be considered administrative impacts of the designation.

Our response: The Service has a record of working collaboratively with the State of Alaska on species and habitat conservation issues. The 1979 Cooperative Agreement with the State provides for the State and the Service to "…exchange biological and other data as necessary to facilitate such determination [of critical habitat] by the Director." As part of the process to designate critical habitat for the polar bear, the Service coordinated with the State to exchange information relevant to our decision-making process. The 1979 Cooperative Agreement does not state or imply that the State of Alaska will participate in all section 7 consultations concerning critical habitat and as such, it would not be appropriate to include administrative costs for these consultations as part of the potential incremental effects of critical habitat designation.

Comment 66: One comment states that the DEA underestimates the number of forecast consultations. Specifically, the DEA describes that, for large-scale projects and plans subject to programmatic biological opinions, there would be one large-scale consultation, as opposed to more frequent project-specific consultations. The comment suggests that individual applicants for projects under these plans will still have to undertake individual consultations, albeit on a smaller scale. The comment estimates that such consultations could number in the hundreds over the next 30 years. Another comment suggested that the assumption that not all individual projects covered by a programmatic consultation would require individual consultation could result in the Service not obtaining adequate funding to implement critical habitat.

Our response: Section 3.2 of the DEA estimates the number of future consultations on oil and gas activities. Approximately 39 formal and programmatic consultations are forecast over the 30-year timeframe of the analysis. This estimate captures both the programmatic consultations on large-scale plans and regulations, such as regular review of the incidental take regulations under the MMPA (50 CFR part 18), and formal consultations on individual projects that fall under these plans, such as specific pipeline and oil and gas field developments. This

estimate is based on the best available information from existing plans and programs regarding the number of potential future individual projects that will require consultation, and accounts for the major consultation efforts that the Service expects to undertake. While the Service also may consult on some smaller scale projects that fall under these plans, these efforts are anticipated to be relatively minor due to the existence of the programmatic consultations and biological opinions addressing the conservation needs for the species. The analysis does note, however, in section 3.2 that the scope and scale of oil and gas activities in the future is highly uncertain, regardless of the critical habitat designation; thus, estimates of the frequency of future consultation is likewise uncertain. In the case that the number of consultations for future oil and gas activities is greater than that estimated in the DEA, the analysis underestimates total administrative costs associated with the designation. The Service's funding is independent of the estimated frequency of future consultations provided in the DEA.

Comment 67: A separate economic analysis on the proposed designation submitted by commenters during the public comment period (see comment 70) asserts that the DEA inappropriately forecasts consultations based on the number of consultations occurring in the previous 2 years. The report states that the assumption that the post-designation consultation rate will be similar to the pre-designation consultation rate is doubtful based on past examples of critical habitat consultation rates.

Our response: As discussed in section 3.2 of the DEA, the number of future consultations on oil and gas activities is not based on a historical average rate of consultation on the polar bear, but instead on plans for specific, future developments and regular review of existing conservation programs. Future consultations for construction and development activities reference the consultation history for the polar bear, but also consider specific, planned projects based on communication with stakeholders and comments provided during the public comment periods on the proposed rule to designate critical habitat for the polar bear.

Comments on Indirect Costs of Critical Habitat Designation

Comment 68: Multiple comments state that the DEA marginalizes the indirect costs of the designation, such as litigation risk, uncertainty, project slippage, and delay. One comment recognizes these are difficult to quantify but asserts that they are real and significant and should be considered quantitatively or, in some cases, qualitatively, in the DEA. Multiple comments state that it is inappropriate for the DEA to dismiss these indirect costs as "too speculative." Many of these comments focus on the potential for project delays. One comment asserts that a one-year delay in construction to the natural gas pipeline project could cost over a billion dollars. Another comment estimates that, given the economic scale of the oil and gas projects, even minor delays could result in costs of hundreds of millions of dollars. ConocoPhillips estimates that a 2-year delay in its western expansion plans at Alpine would result in erosion of project value of between 9 and 23 percent. The comment further states that delays would also have ripple effects in the region, as delays in one project can result in similar delays at other projects. One comment states that each year of delays for construction projects on the North Slope would result in an additional 10 percent increase in construction costs.

In addition to project delay concerns, one comment asserts that the designation would chill the investment climate for economic activity in the Arctic. Multiple comments suggest critical habitat designation for the polar bear will stop new exploration and development and put oil and gas activities at a standstill. One comment estimates stopping oil and gas activity would mean an impact of hundreds of billions of dollars.

On the other hand, one comment questions why indirect costs are included if the DEA itself states that indirect costs should not be treated as part of the incremental economic impact of critical habitat because the estimates are too speculative.

Our response: As noted above, section 3.2.2 of the DEA focuses on potential indirect impacts of the designation. The DEA describes that indirect impacts may result from litigation surrounding critical habitat delaying lease sales or projects, or industry avoiding critical habitat due to regulatory uncertainty or stigma concerns. The DEA does not dismiss the potential for such indirect impacts, but recognizes that significant limitations exist with respect to a reliable calculation of the indirect impacts of critical habitat designation over the next 30 years.

As noted throughout the report, while the DEA highlights one potential scenario of future oil and gas development on the North Slope, this forecast of the scope and scale of the activity itself is subject to considerable uncertainty. In order to monetize indirect impacts, such as project delays, on these activities, additional assumptions would be required regarding: (1) *Which future projects* may experience delays over the next 30 years; (2) the *specific length of delay* that is attributable to the critical habitat designation (as opposed to delay resulting from the listing of the polar bear or other species, habitat, or broader environmental considerations); and (3) the *potential outcome of any litigation* regarding critical habitat.

Absent this information, the DEA provides examples of the potential magnitude and geographic distribution of indirect impacts using hypothetical examples of the costs of delay to representative projects on the North Slope (Exhibit 3–4), as well as information provided by stakeholders regarding expected costs of delay to their operations. Section 3.2.2 of the FEA additionally incorporates the examples of impacts of project delays provided in comments on the DEA. The Service does not consider only the monetized impacts reported in the DEA, but is also required to consider this qualitative discussion of potential impacts, and the accompanying quantitative examples.

Comment 69: Multiple comments state that the Service will most likely be sued over critical habitat, and that critical habitat will add an additional argument to existing lawsuits regarding proposed projects in these areas. For lawsuits in response to the designation, multiple comments assert that the entire cost of litigation in response to the critical habitat designation is attributable to the designation. Two comments state that costs of litigating over critical habitat designation as a whole can be based on current costs of litigation over the polar bear listing: $1 million for a single party, and up to $4 million for the entire cost of litigation, including the use of public resources. These comments additionally estimate that the incremental cost of responding to critical habitat issues as part of broader litigation on oil and gas projects would be $50,000 per project. Another comment estimates that the additional costs of critical habitat litigation regarding its proposed Alaska natural gas pipeline project would be at least $50,000, or up to $300,000 including costs to all parties. A comment from the State estimates that fees for a single party in particular litigation concerning the Act may be as high as $310,973 to $1,110,344. The comment further states that total litigation costs may be 2.5 to

3.5 times as high as this to include impacts to all parties.

Our response: The Service does not consider the costs of litigation surrounding the critical habitat rule itself when considering the economic impacts of the rule. The DEA does, however, discuss the potential for critical habitat to result in or add to litigation regarding specific projects. For example, section 3.2.2 of the DEA acknowledges the potential for critical habitat for the polar bear to result in litigation. Litigation concerning the listing of the polar bear, and multiple other environmental and industry-related issues, is ongoing in the North Slope of Alaska. The extent to which litigation specifically regarding critical habitat may add to the costs of this ongoing litigation is uncertain. While critical habitat designation may stimulate additional legal actions, data do not exist to reliably estimate impacts. That is, estimating the number, scope, and timing of potential legal challenges would require significant speculation. The DEA does describe, however, the potential for litigation surrounding critical habitat designation to result in delays to oil and gas lease sales and projects, and identifies potential impacts of such delays.

Comment 70: The State of Alaska and Arctic Slope Regional Corporation contracted an independent economic analysis of the proposed critical habitat designation. The analysis asserts that it is possible to quantify the indirect impacts of the designation, and that the DEA should incorporate this information. As an example, the analysis estimates the impacts of a delay in oil and gas development attributable to critical habitat for a hypothetical oil field. The analysis estimates that impacts may range from $202.8 million for a 1-year delay to $2.6 billion for a 5-year delay, depending on field size and production run of the oil field. These costs stem from additional resources required to complete the project due to delay, including litigation and inflation during the delay period, and reduced present value of the stream of benefits from the project. In addition to delay costs, the report estimates potential royalty losses associated with the delay, and regional economic impacts of a 1 percent, 5 percent, and 10 percent reduction in production from a hypothetical oil field. A 1 percent reduction in production, for example, reduces regional (North Slope Borough) economic output by $75.8 million per year, with 46 jobs lost. On a State level, the analysis estimates economic output is reduced by $98.8 million per year, with 214 jobs lost. Regarding delays to capital development projects, the report estimates regional economic impacts of $49.3 million in lost output and 199 lost jobs, or Statewide impacts of $81 million in lost output and 473 lost jobs.

Our response: Information provided in this comment and the accompanying analysis has been added to section 3.2.2 of the FEA (*see* Exhibit 3–5). This comment asserts that indirect impacts of critical habitat designation can be quantified and that the DEA fails to do this. To demonstrate this, however, the commenter provides examples of impacts to hypothetical projects using a series of assumptions regarding potential lengths of delay, production volumes, and production timing. In fact, this is the same type of analysis undertaken in section 3.2.2 of the DEA. The example provided in the comment estimates impacts of $202.8 million for a 1-year delay to a hypothetical, representative North Slope oil field development. The DEA likewise provides the example of a $200 million impact associated with a legal injunction delaying Shell's drilling program in the Beaufort Sea. In addition, Exhibit 3–4 of the DEA describes impacts to a hypothetical, representative oil field development (a smaller field than that described in the comment) of various impact scenarios (*e.g.,* assumed 1 percent or 4.75 percent increases in production costs, and assumed 1- or 2-year production delays after 4 years of production). Both the DEA and this comment provide information to the Service regarding the order of magnitude of potential project delays using examples that rely on layered assumptions. However, the actual number of projects that may experience delay due to critical habitat designation for the polar bear, and the specific length of that delay, remain uncertain.

The FEA does not include a regional economic impact analysis of reduced oil and gas activity due to the uncertainty in the project delay and production impact assumptions. Section 3.4 does, however, estimate total potential future oil and gas activity across the region. Specifically, section 3.4.3 describes the gross value of the mean resource estimates, including information on potential revenue to the State of Alaska and Federal government for leasing, taxes, and royalties. Exhibit 3–24 provides information on potential future oil and gas production and direct employment in the proposed critical habitat region. This information is included to provide the Service a sense of the value of the resources at risk.

Comment 71: One comment asserts that there is a real possibility that a number of oil and gas projects, particularly associated with leasing in the Chukchi and Beaufort Seas, will be foreclosed due to critical habitat. One comment states that the commenter is not aware of oil and gas leases in Alaska, or elsewhere on the Outer Continental Shelf (OCS), which have been authorized with existing critical habitats. The comment further states that the Minerals Management Service (MMS), now Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), has twice deleted, or contemplated deletion of, areas within critical habitat from a proposed lease sale. The comment therefore argues it is a possibility that authorizing additional leases in polar bear critical habitat may be politically unpalatable in the future.

Our response: The BOEMRE has not indicated that it would delete critical habitat areas from future lease sales. The DEA does note, however, that regulatory uncertainty or stigma concerns may affect investment on oil and gas projects in the critical habitat area.

Comment 72: According to multiple comments, the increased cost of operating in polar bear habitat effectively places a risk premium on all existing and planned operations in critical habitat, and these increased risks of procedural or administrative project delay and litigation impose immediate costs on the leaseholder. The commenters state that this risk and uncertainty warrants discussion in the DEA.

Our response: Section 3.2.2 of the DEA discusses this issue, noting that uncertainty regarding the potential effects of critical habitat on projects may place a risk premium on project costs. The effect of this risk premium is to reduce the expected profitability of potential projects. Potential economic impacts of this effect are further explored in the section of the DEA titled, "Project Economics under Risk and Uncertainty." The extent to which specific projects across the critical habitat area may experience this effect, however, is uncertain.

Comment 73: Two commenters suggested that a project being proposed in designated critical habitat on existing oil and gas leases will trigger additional litigation regarding NEPA compliance issues, potentially requiring a new environmental impact statement (EIS), instead of an environmental assessment (EA), and causing project delays. The commenters estimated that the costs of producing an EIS are $4 million to $12 million greater than the costs of producing an EA.

Our response: Section 3.2.2 of the DEA focuses on potential "indirect" impacts of the designation, which are defined as the unintended consequences of the regulation. Forecasting specific variables needed to quantify indirect impacts, for example, the outcome of potential litigation, is considered too speculative for the analysis. Information is therefore provided in the DEA regarding precedence for, and the potential magnitude of, such impacts using hypothetical examples. The potential for the designation to result in additional, indirect costs is highlighted throughout the DEA as the chief source of uncertainty in the analysis. We agree that the designation may, in some circumstances, trigger re-initiation of section 7 consultation and review of NEPA compliance documents. Should this happen, we will work with Federal action agencies through this process.

Comment 74: One comment on the DEA recognizes the difficulty of assessing the uncertainty of indirect economic impacts but notes that it is only the magnitude of these impacts that is uncertain.

Our response: The DEA notes that the potential for indirect impacts, such as litigation, uncertainty, and project delays, is real. The magnitude of such indirect impacts, however, depends on a number of unknown variables, including: (1) The potential outcome of any litigation; (2) the frequency and timing of any project delays that result specifically from the designation; and (3) the number of projects experiencing litigation or delay. The specific extent to which critical habitat designation for the polar bear may add to litigation and delays is uncertain.

Comments on the Oil and Gas Analysis

Comment 75: According to one comment, the DEA should attempt to quantify the revenue lost by the State of Alaska resulting from the critical habitat designation. Limitations or effects on oil and gas development will negatively affect the State treasury as the industry is responsible for 90 percent of Alaska's unrestricted revenue. The State estimates, assuming taxes stay at current rates, that the State will lose roughly $14 per barrel of oil left in the ground as a result of the designation.

Our response: As noted above, section 3.4.3 of the DEA describes the gross value of estimated oil and gas production in the region, including information on potential revenue to the State of Alaska and Federal government for leasing, taxes, and royalties. Information provided by the State regarding lost revenue per barrel of oil left in the ground has been added to the FEA. How many, if any, barrels of oil may remain undeveloped due to critical habitat is, however, uncertain.

Comment 76: One comment corrects the DEA statement that only four Alaska Native Regional Corporations have the potential for economic losses, pointing out that all 12 land-owning Alaska Native Regional Corporations stand to lose revenue as a result of decreased payments to the 7(i) account, developed under the Alaska Native Claims Settlement Act (ANCSA) (943 U.S.C. 1601 *et seq.*). These funds also benefit village corporations and shareholders; thus, lost revenues to the 7(i) account affect the State and national economy.

Our response: We agree with this comment and the discussion is corrected in the FEA.

Comment 77: One comment states that Exhibit 3–3, which provides an example financial profile of a representative North Slope oil field with an optimal development scenario, is based on an old example (2000) and could be verified with more recent information. A comment on Exhibit 3–4 of the DEA asserts that the analysis contained in the exhibit is misleading as it is based on hypothetical scenarios.

Our response: Oil and gas interests contacted during the development of the DEA indicated that these examples were appropriately representative of potential impacts to their operations. Further, these examples were subject to technical review by the economist who authored the original report in which they appeared (Goldsmith 2000). The technical reviewer agreed that their inclusion as examples of the potential for project delays and production cost increases to result in economic impacts is appropriate. The DEA notes, however, that these are hypothetical examples, provided to give a sense of the potential magnitude of impacts. We do not have information to assert that the particular project delay and production cost increase assumptions used in these examples will result from critical habitat designation for the polar bear.

Comment 78: One comment suggests that the list of "technological advances" provided in section 3.3.4 of the DEA describing changes in oil and gas activity over time should be removed as it is irrelevant. Specifically, the comment states that Alpine does not provide "a model for roadless development," and there have not yet been any sub-sea completions for production in the Beaufort and Chukchi Seas.

Our response: The discussion of technological advances in oil and gas development is relevant to the discussion that oil and gas activities are increasingly able to minimize surface area disruption, thereby minimizing potential effects to polar bear critical habitat.

Comment 79: One comment suggests that the Service introduced bias into the DEA by contracting with Northern Economics, a firm that has previously produced economic reports for Shell. The comment asserts that the DEA should not rely on the oil and gas activity forecast produced by Northern Economics for Shell.

Our response: Northern Economics' experience forecasting oil and gas activities in the region provides them with expertise regarding this industry. The standard for the DEA is that it be based on the best available information. A chief concern of the DEA is to forecast the potential scope and scale of oil and gas activities in the region. The entities with the most knowledge on this subject are oil and gas companies operating in the region, and the regulating entities (*e.g.,* BOEMRE and the State of Alaska). Northern Economics thus relied on information provided by these entities to inform the DEA.

Comment 80: One comment states that the "volumetric analysis" of oil facilities on barrier islands should not be extrapolated across the entire proposed critical habitat area.

Our response: We agree that oil and gas production is unlikely to take place across the entirety of proposed critical habitat. It is not possible, however, to identify where yet-to-be-discovered oil and gas resources will be found. Thus, to estimate potential oil and gas production across the North Slope, the DEA relies on the assumption that the potential resources are equally distributed across the landscape. In other words, the estimate of future discoveries in the critical habitat units is a function of the areal extent of the unit.

Comment 81: A comment on Exhibit 3–23, which summarizes oil and gas production and employment in the North Slope, suggests that the chart does not add up, does not make sense, and is an inappropriate summary of the data because oil and gas production would not take place across the entirety of proposed critical habitat.

Our response: Exhibit 3–23 in the DEA is revised in the FEA (as Exhibit 3–24) for clarification. The table is provided to illustrate the relative importance of proposed critical habitat units in terms of potential production and employment in the oil and gas industry on the North Slope.

Comments on Other Activities

Comment 82: One comment asserts that the designation will have an economic impact on the North Slope by delaying capital improvement projects, such as sewer upgrades, power plant construction, sea wall construction, fuel pipeline construction, gas field drilling, and gravel mining.

Our response: Chapter 4 of the DEA discusses impacts to these activities. As with oil and gas activities, the analysis recognizes the potential for the designation to result in project delays but is unable to monetize specific impacts due to uncertainty regarding the potential frequency and timing of delays.

Comment 83: One comment states that the DEA should quantify costs to gravel mining operations, noting that if gravel cannot be secured from a local source for a project, it will need to be imported, increasing project costs. The comment states that the DEA should identify the cost differential between locally sourced materials and imported materials. Another comment describes that, while no large-scale coal mining operations other than the Red Dog Mine currently exist in proposed critical habitat, the potential exists for future operations. Limitations on potential future coal mining should be considered in the DEA. An additional comment questioned how the DEA forecast future mining projects.

Our response: Section 4.1.3 of the DEA discusses gravel and coal mining activities within the proposed critical habitat area, which does not include Red Dog Mine as it is located outside the critical habitat designation for polar bear. Future mining activities are forecast based on their historical frequency in the region, as well as communication with stakeholders and public comments provided on the proposed rule. As discussed in section 4.2 of the DEA, gravel mining, coal mining, and other construction and development activities with a Federal nexus may be subject to the following conservation measures for the polar bear due to the listing of the species: (1) Avoid all activities within 1.6 km (1 mi) of known polar bear dens; (2) develop operating procedures to avoid polar bears; and (3) ensure that personnel are trained in bear management activities. These conservation measures would be requested via the MMPA regardless of critical habitat designation and are therefore considered baseline impacts. Critical habitat designation is not expected to result in additional conservation measures for the polar bear with respect to mining activities. In the case that the number of future mines developed in the critical habitat area is greater than that estimated in the DEA, the analysis underestimates the administrative costs of consultation on these projects.

Comment 84: According to one comment, the DEA should address potential impacts on the future commercial harvest of seafood in the Arctic. Currently, salmon, crab, halibut, and other species are harvested in State waters. While the current Fisheries Management Plan in the Arctic prohibits commercial harvest of fish resources in the Arctic Management Area, the North Pacific Fisheries Management Council (NPFMC) will reconsider authorizing commercial fishing upon receiving a petition from the public, or a recommendation from National Marine Fisheries Service (NMFS) or the State of Alaska. Thus, potential for some commercial fisheries exists, although for what species is unknown.

Our response: In 2009, the NPFMC released its Fishery Management Plan for Fish Resources of the Arctic Management Area, covering all U.S. waters north of the Bering Strait. Management policy for this region is to prohibit all commercial harvest of fish until sufficient information is available to support the sustainable management of a commercial fishery. The future potential for commercial fishing in the Federal waters of the region is therefore highly uncertain. Ongoing harvest of fish and shellfish in State waters has continued following the listing of the polar bear under the Act, and is not expected to change following designation of critical habitat.

Comments on Benefits

Comment 85: Two comments suggest that the DEA does not sufficiently evaluate or quantify benefits, leading to an imbalance in the analysis. One comment questions the language on page 1–1 of the DEA, "[t]he U.S. Office of Management and Budget's (OMB) guidelines for conducting economic analysis of regulations direct Federal agencies to measure the costs of a regulatory action against a baseline * * *" The comment suggests that the statement should be inclusive of costs and benefits, rather than costs alone. Other comments assert that the only baseline benefits considered are use values (avoided attacks on humans, hunting, polar bear viewing, and improved water quality). The DEA does not discuss use of meta-analysis to quantify existence values of polar bears. The comments additionally state that the DEA includes estimates for speculative indirect costs, such as limits on oil and gas exploration, litigation costs, and reductions in regional economic activity, but does not acknowledge indirect ecosystem service benefits, such as water quality and carbon sequestration. One comment further states that the benefits estimates are not scaled up across the entire critical habitat area as are the costs in the DEA.

Our response: We agree with the comment that OMB's guidance to Federal agencies on the development of regulatory analysis (contained in Circular A–4, September 17, 2003) directs agencies to measure the costs and benefits of regulations against a baseline. Chapter 7 of the DEA discusses economic benefits of the critical habitat designation. As described on page 7–1, the Service "* * * does not anticipate that the designation of critical habitat will result in additional conservation requirements for the polar bear. As a result, no incremental conservation measures are anticipated in this analysis and, as such, no incremental economic benefits were forecast from a designation of critical habitat." Chapter 7 does include discussion of baseline benefits of polar bear conservation, however, and includes a specific section on non-use values. This section describes that no studies exist that attempt to estimate existence values for polar bear, but provides information from other potentially relevant studies, such as those regarding existences values for grizzly bears. All categories of benefits discussed in Chapter 7—use values, non-use values, and ecosystem service benefits—are relevant to the baseline and are not expected to be affected by critical habitat designation.

Comment 86: One comment states that the DEA downplays the importance of the Arctic National Wildlife Refuge (ANWR) and fails to acknowledge its economic benefits, as well as existing values to polar bear conservation. The comment states that the DEA fails to consider economic losses to tourism that could be avoided, and passive use values, such as were assessed after the Exxon Valdez oil spill.

Our response: The purpose of the DEA is to provide the best available information regarding where the benefits of excluding areas from critical habitat may outweigh the benefits of including those areas in critical habitat. Thus, evaluating the benefits of the existence of ANWR is not within the scope of this analysis.

Comment 87: One comment asserts that the key issues and conclusions of the report should provide the economic

benefits of subsistence to Alaska Native residents.

Our response: As described in section 2.2 of the DEA, subsistence activities are exempt from regulation under the Act and MMPA, unless the activities "materially and negatively" affect the species. In addition, critical habitat designation is not expected to result in additional conservation measures for the polar bear. Subsistence activities are therefore not expected to be affected positively or negatively by the designation of critical habitat for the polar bears.

Comments on Distributional Analysis

Comment 88: One comment asserts that the DEA does not include distributional effects of the designation on Inupiat Eskimos in the North Slope Borough. Another comment states that the DEA does not take into account the distributional and indirect impact on the Native people of Nuiqsut and the North Slope. An additional comment from the NANA Corporation suggests the DEA does not capture impacts to its economic and development projects. Another comment offers that the effects of the designation on the lifestyle, cultures, and economic activities of the villages within the proposed critical habitat area are not separable from subsistence activities.

Our response: Section 2.1 of the DEA provides a socioeconomic profile of the ANCSA Regional Corporation's location within the critical habitat region. As described above, critical habitat designation is not expected to result in additional conservation requirements for the polar bear. Thus, economic and development projects of Native Alaskan communities are not expected to experience further regulation with respect to polar bear conservation following the designation. Further, the DEA describes potential indirect impacts of the designation but does not explicitly quantify such impacts for the reasons described above.

Other Comments on the DEA

Comment 89: A comment on the DEA questions language on page 1–4, paragraph 9, that describes an example of how a regulation may result in economic efficiency impacts. The example provided notes, "if the set of activities that may take place on a parcel of land are limited as a result of the designation or presence of the species, and thus the market value of the land is reduced, this reduction in value represents one measure of opportunity cost or change in economic efficiency." Specifically, the comment states that, in many cases, the value of land increases if buyers are assured that they will continue to enjoy a scenic view or retain ecosystem services as a result of habitat conservation.

Our response: The language from the DEA that is cited in this comment provides one example of how critical habitat designation may result in economic impacts outside of section 7 of the Act. Based on our evaluation in the DEA, we do not expect land value impacts, positive or negative, associated specifically with the designation of critical habitat for polar bears.

Comment 90: One comment questions the language describing the treatment of benefits on page 1–15 of the DEA that states it will address benefits qualitatively because of the "lack of resources on the implementing agency's part to conduct new research." The comment asserts that the primary and secondary research should be done as part of the economic analysis.

Our response: The DEA is required to be based on the best available information. Primary research, such as design and implementation of original surveys, is outside of the scope of the analysis and this rule making.

Comment 91: Two comments state that the DEA should recognize Alaska Native-owned lands as private lands.

Our response: The FEA is revised to note that Alaska Native-owned lands should be considered private.

Comment 92: One comment states that the section of the DEA describing industry concern should not include opinions from oil companies that did not wish to be cited in the DEA. Similarly, the comment states that the economic analysis should not cite information obtained through interviews with stakeholders, such as the ASRC or BOEMRE, that cannot be verified or for which no factual economic evidence is provided.

Our response: The DEA relies on the best available information to quantify impacts of critical habitat designation. Permitting agencies and landowners and land managers frequently possess the most knowledge regarding future projects or plans within the proposed critical habitat area. It would therefore be inappropriate to exclude their input from consideration in the analysis. The DEA was subject to technical review by an economist from the University of Alaska with regional and industry expertise. In addition, a purpose of the public comment period is to solicit feedback regarding the facts and figures presented in the report.

Summary of the Changes From the 2009 Proposed Rule

After thorough evaluation of all the comments received on the proposed critical habitat designation and the DEA, we have made the following changes to our proposed designation.

(1) Based on the benefits of maintaining and sustaining conservation partnerships with Native communities, the Secretary has exercised his discretion, as authorized under section 4(b)(2) of the Act, to exclude the town sites for Barrow and Kaktovik, the only formally defined and recognized communities that overlap with the proposed critical habitat. The maps remain essentially unchanged with the exception of the addition of the boundaries for the exclusion of Barrow and Kaktovik. Detailed maps of areas excluded from the critical habitat designation can be found at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm.*

(2) All existing manmade structures (on any land ownership) are not included in final critical habitat designation because these areas are not, nor do they contain, the features essential to the conservation of the polar bear.

(3) Radar Sites within the proposed polar bear critical habitat designation, which include one Inactive Radar Site (Point Lonely (former SRRS)) and four Active Radar Sites (Point Barrow LRRS, Oliktok LRRS, Bullen Point LRRS, and Barter Island LRRS), are exempted from this polar bear critical habitat designation under section 4(a)(3) of the Act because they are covered by an INRMP that provides a benefit to the species.

(4) The October 29, 2009, proposed rule (74 FR 56058) indicated a total proposed designation of approximately 519,403 square kilometers (km^2) (200,541 square miles (mi^2)). However, we incorrectly identified the extent of U.S. territorial waters in that proposal; thus, we reduced the critical habitat area in the final rule to accurately reflect the U.S. boundary for sea-ice critical habitat. With this change and the removal of the USAF Radar Sites and the communities of Barrow and Kaktovik, we are designating a total of approximately 484,734 km^2 (187,157 mi^2) of critical habitat for the polar bear. We updated the information on the maps and text in this rule to reflect these changes.

(5) We revised the preamble, including two PCEs (sea-ice habitat and denning habitat), to respond to peer review comments and to clarify our intent. We also made corrections to

ensure the consistent use of terms, citations, and grammar.

(6) We updated the references cited in light of new information received in response to the proposed rule.

(7) We finalized our economic analysis based on comments received in response to the proposed rule. The Secretary did not exercise his discretion under section 4(b)(2) of the Act to exclude any areas from the designation on the basis of potential economic impacts.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, nor does it allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. However, even in the event of destruction or an adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas supporting the essential physical or biological features that provide essential life cycle needs of the species; that is, areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to the species' present range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that this critical habitat determination may not include all of the habitat areas that we may later determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for the conservation or survival of the species.

Areas that support polar bear populations in the United States, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act and our other wildlife authorities. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which specific geographical areas occupied at the time of listing to designate as critical habitat, we considered areas containing the physical and biological features essential to the conservation of the species which may require special management considerations or protection. We consider the essential physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs for the polar bear in the United States based on its physical and biological needs, as described in the General Overview and Distribution and Habitat sections of the proposed rule to designate critical habitat for the polar bear published in the **Federal Register** on October 29, 2009 (74 FR 56058), and the following information.

Space for Individual and Population Growth and for Normal Behavior

Although home ranges can vary greatly among individuals (Garner *et al.* 1990, p. 224; Amstrup *et al.* 2000b, p. 956), the overall home range size for polar bears from the two U.S. populations is relatively large. The movement patterns and home ranges of polar bears are directly related to the seasonal and highly dynamic redistributions of sea ice (Garner *et al.* 1990, p. 224; Garner *et al.* 1994, pp. 112–113; Ferguson *et al.* 2001, pp. 51–52; Mauritzen *et al.* 2001, p. 1,709; Durner *et al.* 2004, pp. 16–20; Durner *et al.* 2006a, pp. 27–30). The movement patterns of the sea ice strongly influence the availability and accessibility of the preferred prey for polar bears, ringed (*Pusa hispida*) and bearded (*Erignathus barbatus*) seals (Stirling *et al.* 1993, p. 21).

Polar bears require sea ice as a platform for hunting and feeding on seals, seasonal and long-distance movements, travel to terrestrial maternal denning areas, resting, and mating (Stirling and Derocher 1993, p. 241). Moore and Huntington (2009, p. S159) classified polar bears as an ice-obligate (ice-restricted) species due to this dependence on sea ice as a platform for resting, breeding, and foraging. A majority of the polar bears in the U.S. populations remain with the sea ice year-round and prefer the annual sea ice located over the continental shelf, and areas near the southern ice edge, for foraging (Laidre *et al.* 2008, p. S105; Durner *et al.* 2009a, p. 39). Open water is not considered an essential feature for polar bears, because life functions such as feeding, reproduction, or resting do not occur in open water. However, open water is a fundamental part of the marine system that supports seal species, the principal prey of polar bears, and seasonally refreezes to form the ice needed by the bears. The interface of open water and sea ice is an important habitat used by polar bears (Stirling *et al.* 1993, pp. 18, 20–22; Stirling 1997, pp. 11, 15, 16; Durner *et al.* 2009a, p. 52). In addition, the extent of open water may play an integral role in the behavior patterns of polar bears because vast areas of open water may limit a bear's ability to access sea ice or land (Monnett and Gleason 2006, p. 5).

The optimal sea-ice habitat for polar bears varies both geographically and temporally, and the use of this area varies seasonally, with the greatest movements occurring during the advance of the sea ice in fall and early winter and retreat of the sea ice during spring and early summer. In winter, polar bears select areas of high sea-ice concentrations along the Alaska coast (Durner *et al.* 2009a, p. 52), with their preferred habitat being sea-ice habitat near the leads (linear openings or cracks in sea ice), polynyas (areas of open sea surrounded by sea ice), flaw zones (larger, semi-permanent polynyas), and shore leads that run parallel to the mainland coast of Alaska. During other times of the year, the marginal sea-ice zone near the sea-ice edge over the continental shelf is the optimal feeding habitat for polar bears because access and availability of ringed seals is greatest in this zone (Durner *et al.* 2004, pp. 18–19).

The dynamic nature of the sea ice in the Beaufort and Chukchi Seas, which changes continually within and among years, makes it difficult to predict the specific time or area where the optimal habitat occurs. However, the Resource Selection Function (RSF) models (Durner *et al.* 2004, pp. 16–19; Durner *et al.* 2006a, pp. 26–29; Durner *et al.* 2009a, p. 39) show that polar bears will select areas of sea-ice habitat with the following characteristics: (1) Sea-ice concentrations approximately 50 percent or greater that are adjacent to open water areas, leads, polynyas, and that are over the shallower, more productive waters over the continental shelf (waters 300 m (984.2 ft) or less in depth); and (2) flaw zones that are over the shallower, more productive waters over the continental shelf (waters 300 m (984.2 ft) or less in depth). In addition, there is evidence of spatial segregation and habitat preferences for different age/sex cohorts and reproductive status of the population, although this is not well studied. For example, in the southern Beaufort Sea, Stirling *et al.* (1993, pp. 20–21) found that following den emergence, females with cubs-of-the-year show a strong preference for stable, shore-fast ice.

Mauritzen *et al.* (2003b, p. 123) suggested that polar bears select habitat with sea-ice concentrations that are optimal for hunting seals, provide safety from ocean storms, and prevent them from becoming separated from the main pack ice. Although polar bears are most often found where sea-ice concentrations exceed 50 percent (Stirling *et al.* 1999, p. 295; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2006a, p. 24; Durner *et al.* 2009a, p. 51), they will use lower sea-ice concentrations if this is the only ice that is available over the shallower, more productive waters of the continental shelf. This was evident during the late-summer to early-fall open water period in August and September of 2008. During this time, most of the sea ice in the Beaufort Sea had receded beyond the edge of the continental shelf, except for a narrow tongue of sparse ice that extended over shelf waters in the eastern Beaufort Sea. Polar bears were documented using this marginal sea-ice habitat with sea-ice concentrations between 15 percent and 30 percent, presumably in an attempt to remain in the more productive feeding areas over the continental shelf (Steve Amstrup, U.S. Geological Survey, pers. comm.; USFWS, unpublished data).

Reductions in sea ice negatively impact polar bears by increasing the energetic demands of movement in seeking prey, causing seasonal redistribution of substantial portions of polar bear populations into marginal ice or terrestrial habitats with fewer opportunities for feeding, and increasing the susceptibility of bears to other stressors. As the summer sea ice edge retracts to deeper, less productive Polar Basin waters, polar bears will face increasing intraspecific competition for limited food resources, increasing distances to swim from the pack ice to the coast with increased risk of drowning, increasing interaction with humans in terrestrial or nearshore areas with negative consequences, and declining population (Amstrup *et al.* 2008, p. 236).

One of the expected outcomes from climate change in the Arctic is that the distance between the southern edge of the pack ice and coastal denning areas will increase during the summer. This is likely to result in an increase in use of terrestrial areas during the summer and early fall (Schliebe *et al.* 2008, p. 2). Should the distance become too great, it could reduce polar bears' access to, and hence the availability of, optimal feeding habitat and preferred terrestrial

denning locations during critical times of the year (Bergen *et al.* 2007, p. 6).

Based on the best information available and the dependence of polar bears on sea-ice habitat located over the continental shelf, we have determined that sea ice over the shallower waters of the continental shelf (waters of 300 m or less (984.2 ft or less)) is an essential physical feature for polar bears in the southern Beaufort, Chukchi, and Bering Seas for space for individual and population growth, and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Polar bears are carnivores that feed primarily on ice-dependent seals (frequently referred to as "ice seals") throughout their range. Although their primary prey is the ringed seal, polar bears also hunt, to a lesser extent, bearded seals (Stirling and Archibald 1977, p. 1,127; Smith 1980, p. 2,201). In some locales, other seal species are taken. On average, an adult polar bear needs approximately 2 kg (4.4 lbs) of seal fat per day to survive (Best 1985, p. 1,035). Sufficient nutrition is critical for survival in the arctic environment and may be obtained and stored as fat when prey is abundant.

Polar bear movements and distribution are strongly influenced by two factors: (1) The seasonal variations in the presence of the sea ice, and (2) the distribution, abundance, and accessibility of ringed and, to a lesser extent, bearded seals (Stirling *et al.* 1993, p. 18). For example, the anomalous heavy sea-ice conditions in the mid-1970s and mid-1980s caused significant declines in the productivity of ringed seals, which resulted in similar declines in the birth rate of polar bears and the survival of subadults (Stirling 2002, p. 68). The presence of and accessibility of ice seals in the sea-ice habitat are vital to the conservation of the species.

Although seals are their primary prey, polar bears occasionally take much larger animals, such as walruses (*Odobenus rosmarus*), narwhal (*Monodon monoceros*), and beluga whales (*Delphinapterus leucas*) (Kiliaan and Stirling 1978, p. 199; Smith 1980, p. 2,206; Smith 1985, pp. 72–73; Lowry *et al.* 1987, p. 141; Calvert and Stirling 1990, p. 352; Smith and Sjare 1990, p. 99). While these species are occasionally taken, they currently appear to be less important energy sources (Derocher *et al.* 2004, p. 163). In some areas and under some conditions, carrion or remains of subsistence-harvested bowhead whales (*Balaena mysticetus*) may be important to polar bear sustenance as short-term supplemental forms of nutrition. Stirling and Øritsland (1995, p. 2,609) suggested that in areas where ringed seal populations were reduced, other prey species were being substituted. For example, harp seals (*Pagophilus groenlandicus*) are the predominant prey species for polar bears from the Davis Strait population in Canada (Iverson *et al.* 2006, p. 110). Greater availability of harp seals due to a change in distribution may continue to support large numbers of polar bears from the Davis Strait population even if ringed seals become less available (Stirling and Parkinson 2006, p. 270; Iverson *et al.* 2006, p. 110).

Polar bears are very sensitive to changes in sea ice due to climate change because of the effects on the availability of ice seals and their specialized feeding requirements (Laidre *et al.* 2008, p. S112). The availability and accessibility of seals to polar bears, which often hunt at the seals' breathing holes, are likely to decrease with increasing amounts of open water or fragmented ice (Derocher *et al.* 2004, p. 167). Polar bears rarely capture ringed seals in the open water (Furnell and Oolooyuk 1980, p. 89), so it is unlikely that polar bears can survive in ice-free water. Although polar bears occasionally take harbor seals (*Phoca vitulina*), bearded seals, and walrus when they are hauled out on land, it is unlikely, if those species were available, that this would compensate for the reduced availability of ringed seals (Derocher *et al.* 2004, p. 167).

Pregnant polar bear females with insufficient fat stores prior to denning, or in poor hunting condition in the early spring after den emergence, may lead to increased cub mortality (Atkinson and Ramsay 1995, pp. 565–566; Derocher *et al.* 2004, p. 170). Regehr *et al.* (2007b, pp. 17–18) suggested that the increase in the duration of the open water period in fall was a contributing factor to the decrease in the productivity of polar bears in the southern Beaufort Sea population and to the population decline in the Western Hudson Bay population (Stirling *et al.* 1999, p. 304; Regehr *et al.* 2007a, p. 2,673). In the southern Beaufort Sea, the decline in the survival rate of cubs may be directly linked to the inability of females to obtain sufficient nutrition prior to denning (Regehr *et al.* 2006, p. 11; Amstrup *et al.* 2008, p. 236). The inability to obtain sufficient food resources may be due to increases in the length of the fall open water period, which reduces the amount of time available for feeding prior to denning. Polar bears in the southern Beaufort Sea typically reach their maximum weight in fall. Fall, therefore, may be a critical period for winter survival for this population (Garner *et al.* 1994, p. 117; Durner and Amstrup 1996, p. 483). In Alaska, it is not unusual for females in poor condition after den emergence to lose their cubs (Amstrup 2003, p. 601).

During the spring, ringed seals give birth to pups in subnivean (in or under the snow layer) lairs on top of the sea ice. The availability of these seal pups to adult female polar bears with cubs-of-the-year in the spring following den emergence may be critical (Garner *et al.* 1994, p. 117; Stirling and Lunn 1997, p. 177). Atkinson and Ramsay (1995, p. 565) and Derocher and Stirling (1996, p. 1,249; 1998, pp. 255–256) found that heavier cubs have a higher survival rate, and that declines in fat reserves in females during critical periods can negatively affect denning success and cub survival.

Reductions in sea ice will likely reduce productivity of most ice seal species as well, resulting in changes in composition and decrease in abundance of seal species indigenous to some areas (Derocher *et al.* 2004. pp. 167–169). These changes will likely decrease availability, or the timing of availability, of seals as food for polar bears. Ringed seals will likely remain distributed in shallower, more productive southerly areas that are losing their seasonal sea ice and becoming characterized by vast expanses of open water in the spring–summer and fall periods (Harwood and Stirling 1992, pp. 897–898). As a result, the seals will remain unavailable as prey to polar bears during critical times of the year. These factors may, in turn, result in a steady decline in the physical condition of polar bears, which precedes population-level demographic declines in reproduction and survival (Stirling and Parkinson 2006, pp. 266–267; Regehr *et al.* 2007a, pp. 2,679–2,681).

Based on the information presented above, we conclude that the accessibility and availability of sufficient food resources is dependent upon availability of suitable sea-ice habitat over the shallower waters of the Chukchi and Bering Seas and southern Beaufort Sea. Therefore, we have determined that sea ice that moves or forms over the shallower waters of the continental shelf (300 m (984.2 ft) or less), and that contains adequate prey resources (primarily ringed and bearded seals) to support polar bears, is an essential physical feature for polar bears in the southern Beaufort, Chukchi, and Bering Seas for food and physiological requirements.

Cover or Shelter

Polar bears from the U.S. populations generally remain with the sea ice for most of the year, and, except for maternal denning, only spend short periods of time on land. Polar bears from U.S. populations take advantage of logs, ocean bluffs, and stream and river drainages to seek shelter from the wind (Lentfer 1976, p. 9). Messier *et al.* (1994, p. 425), Ferguson *et al.* (2000a, p. 1,122), and Omi *et al.* (2003, p. 195) found that polar bears of all ages and both sexes from more northerly populations in Canada may remain in temporary shelter dens in snow drifts on the ice for up to 2 months, presumably to avoid storms, periods of intense cold, and food shortages. The lack of documented use of shelter dens for extended periods by polar bears in Alaska is probably due to the availability of ice seals throughout the winter and less severe weather conditions compared to more northerly latitudes. Occasionally polar bears in the United States, particularly females with small cubs, will dig temporary shelter dens to avoid severe winter storms (Lentfer 1976, p. 9; Amstrup, unpublished data). Information from Native hunters in Alaska suggests that, except for pregnant females and females with young cubs, polar bears do not require additional cover or shelter for survival throughout the year (Lentfer 1976, p. 9). However, the importance of these shelter dens may increase in the future if polar bears, experiencing nutritional stress as a result of loss of optimal sea-ice habitat and access to prey, need to minimize nonessential activities to conserve energy.

Currently, cover and shelter are not considered to be limiting factors for the conservation of polar bears in the United States. The needs of parturient females and cubs for cover and shelter are satisfied through denning behavior and discussed below.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

One of the most critical periods for polar bears occurs during denning because the newborn cubs are completely helpless and must remain in the maternal den for protection and growth until they are able, at approximately 3 months of age, to survive the outside elements (Blix and Lentfer 1979, p. R70; Amstrup 2003, p. 596; Durner *et al.* 2006b, p. 31). Den disturbances from human activities have caused den abandonment and cub mortality in the past (Amstrup 1993, p. 249).

The majority of polar bears that den in the United States are from the southern Beaufort Sea population. Unlike the high density of dens that occur on Wrangel Island, Russia (one of the principal denning areas of the Chukchi-Bering Seas population), individual polar bear dens in northern Alaska are widely dispersed over large areas. Within this region, barrier islands, river bank drainages, and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning than other areas (Amstrup 2003, pp. 596–597; Durner *et al.* 2006b, p. 34). We applied the criteria developed by Durner *et al.* (2009, p. 4–5) to the potential denning areas in Alaska and determined that only the denning habitat from Barrow to the United States-Canada border was considered essential.

Polar bears from the southern Beaufort Sea population den on drifting pack ice, shore-fast ice, and land (Amstrup and Gardner 1994, pp. 4–5), while most other polar bear populations den only on land or shore-fast ice (Amstrup 2003, p. 596). The distribution of maternal denning in the southern Beaufort Sea appears to have changed in recent years. While Amstrup and Gardner (1994) observed that approximately 50 percent of maternal dens occurred on the pack ice, Fischbach *et al.* (2007, p. 1,399) documented a decrease in pack ice denning over 2 decades, from 62 percent (1985–1994) to 37 percent (1998–2004). Fischbach *et al.* (2007, p. 1,403) concluded that the changes in the den distribution were in response to delays in the autumn freeze-up and a reduction in availability and quality of the more stable pack ice suitable for denning, due to increasingly thinner and less stable ice in fall. It is expected that the number of polar bears denning on land in northern Alaska east of Barrow will continue to increase, if the predictions of the continued loss of arctic sea ice due to climate change occur (Schliebe *et al.* 2008, p. 2).

Polar bears in the Beaufort Sea exhibit fidelity to denning areas but not specific den sites (Amstrup and Gardner 1994, p. 7). The location of terrestrial maternal dens is dependent upon a variety of factors, such as sea-ice conditions, prey availability, and weather, all of which vary seasonally and annually. Stirling and Andriashek (1992, p. 364) found that dens often occurred on land adjacent to areas that developed sea ice early in the autumn. Only 4 percent of the polar bear dens from the southern Beaufort Sea population were found on the shore–fast ice adjacent to the mainland coast of Alaska during the 1990s. Thus, the shore–fast ice was not a major denning habitat even during the period when approximately 60 percent of the polar bears dens occurred on the ice.

Polar bears typically choose terrestrial den sites that are near the coast. Amstrup *et al.* (2003, p. 596) determined that 80 percent of all the terrestrial maternal dens located by radio-telemetry were found within 10 km (6.2 mi) of the coast, and over 60 percent were on the coast or on barrier islands. Polar bears frequently use the larger tundra-covered barrier islands that have sufficient relief to accumulate enough snow for denning (Amstrup and Gardner 1994, p. 7). Specific topographic features, such as coastal bluffs and river banks, with suitable macrohabitat characteristics are used as den sites. Suitable macrohabitat characteristics include: (a) Steep, stable slopes (mean = 40°, SD = 13.5°, range 15.5–50.0°), with heights ranging from 1.3 to 34 m (mean = 5.4 m, SD = 7.4) (4.3 to 111.6 ft, mean = 17.7 ft, SD = 24.3), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; and (c) the absence of disturbance from humans and human activities that might attract other polar bears.

Using high-resolution photographs, Durner *et al.* (2001, p. 119; 2006b, p. 33) mapped suitable denning habitat based on the physical characteristics described above for polar bears from the Colville Delta to the United States-Canada border. They determined there were 1,782 km (1,107 mi) of suitable bank habitat for denning by polar bears between the Colville River and the Tamayariak River (Durner *et al.* 2001, p. 119) and an additional 3,621 km (2,250 mi) between the Canning River and the United States-Canada border in northern Alaska (Durner *et al.* 2006b, p. 33). It should be noted that the areas included in these calculations only include those areas from the Colville River to the United States-Canada border and do not include denning habitat from the Colville River to Barrow or denning habitat located farther inland.

Great distances of open water and delayed freeze-up can prohibit polar bear terrestrial denning. On Hopen, the most southern island of Svalbard, Norway, polar bears do not den when sea ice freezes too late (Derocher *et al.* 2004, p. 166), and terrestrial denning by polar bears is also restricted by greater distances of open water (Fischbach *et al.* 2007, p. 1,402). In the southern Beaufort Sea, changes in polar bear habitat use

have been associated with declines in sea-ice extent (Fischbach *et al.* 2007, p. 1,402; Durner *et al.* 2009a, pp. 55). Fischbach *et al.* (2007, p. 1403–1404) concluded that female polar bear denning distribution changes in response to the changing nature of sea ice (*e.g.,* amount of stable ice, ice consolidation, and a longer open-water period).

In recent years, the East Siberian and Chukchi Seas have exhibited some of the most significant changes in the Arctic, including pronounced warming and thinning of the sea ice (Rigor *et al.* 2002, p. 2,660; Rodrigues 2008, p. 141; Durner *et al.* 2009a, p. 49; Markus *et al.* 2009, pp. 12–13). Scientific data (Rigor and Wallace 2004, p. 3) and local observations suggest that reductions in sea ice in the Chukchi Sea became significant starting at the end of the 1980s. Rodrigues (2008, p. 141) documented declines in both sea-ice extent and area for all Russian Arctic seas between 1979 and 2007. Loss was particularly high along the Alaskan and Chukotkan coasts. Markus *et al.* (2009, p. 9) observed trends of earlier melt onset and later freeze up to be stronger in the Chukchi and Beaufort Seas than any other region in the Arctic. These ice variables have been shown to be the primary drivers of reduced summer sea ice and, therefore, likely reflect changes in a number of sea-ice characteristics. The Chukchi Sea many be particularly vulnerable to rapid sea-ice loss due to the influence of warmer waters of the Pacific Ocean (Woodgate *et al.* 2006, p. 3), as well as regional effects of atmospheric circulation (Rigor *et al.* 2002, p. 2,658; Maslanik *et al.* 2007, p. 3).

Although suitable topography exists on land in western Alaska along the Chukchi Sea coast (USFWS 1995, pp. A19–A33), most of the polar bears from the Chukchi-Bering Seas population currently and historically denned on Wrangel Island and the Chukotka Peninsula, Russia (Stishov 1991b, pp. 90–92). Polar bears likely denned on Wrangel Island and the Chukotka Peninsula because of the proximity of these terrestrial denning areas to the sea-ice edge in the fall. The Service believes that the lengthening of the open-water season and declines in the minimum sea-ice extent coupled with later freeze-up of sea ice in the past 10 years further accentuates the lack of access to terrestrial denning habitat on the coast of western Alaska. The fall sea-ice extent in the Chukchi Sea has declined in recent years (Rodrigues 2008, p. 141; Comiso *et al.* 2008, p. 6; Durner *et al.* 2009a, p. 46; Markus *et al.* 2009, p. 1). The Arctic sea ice this year (2010) receded to the third lowest extent since satellite tracking began in 1979, and during 3 of the past 4 years has record minimum areas have been documented (2007 (lowest), 2009 (second-lowest) and 2010 (third-lowest)) (*http://nsidc.org/arcticseaicenews/* viewed on September 21, 2010). Thus, the distances between the summer foraging habitats and the terrestrial denning habitat in western Alaska have increased and are expected to continue to increase.

In 2008, the Service and the USGS initiated a polar bear study in the Chukchi Sea. An objective of the study is to examine and assess seasonal distribution and habitat use of polar bears in response to environmental changes. During field work, between March and May from 2008–2009, 37 radio collars were deployed on adult female polar bears captured on the sea ice between Point Hope and Kotzebue in the Alaskan Chukchi Sea. Locations of collared female polar bears indicated that of 13 potentially parturient females none denned on the coast of western Alaska. Three did not enter dens and, of the 10 denning occurrences, 8 occurred on Wrangel Island, Russia; 1 on Herald Island Russia; and 1 on sea ice that drifted over 1,287 km (800 mi) north of Wrangel Island, Russia (USFWS unpublished data).

Based on our evaluation of the available information, we believe it is reasonable to assume that the increase in both distance from shore and duration of the fall minimum ice extent in the Chukchi Sea prevents parturient females from reaching the western coast of Alaska prior to denning. Thus, terrestrial denning habitat in western Alaska lacks the "access via sea-ice" component of the terrestrial denning habitat PCE that is necessary for inclusion in critical habitat.

Sea-ice conditions after den emergence can also be important for cub survival (Stirling *et al.* 1993, pp. 20–21; Stirling and Lunn 1997, p. 177), as females typically take their cubs out on the sea ice as soon as the cubs can travel. Small size, limited mobility, and susceptibility to hypothermia from swimming in the cold arctic waters limit the ability of cubs-of-the-year to traverse extensive areas of broken ice and open water immediately following den emergence. If sea-ice conditions become increasingly unstable and fragmented, and large areas of open water develop between the shore-fast ice and the drifting pack ice, females with cubs-of-the-year may have to rely more heavily on shore-fast ice to prevent cub mortality from hypothermia (Larsen 1985, p. 325; Blix and Lentfer 1979, p. R70). Norwegian polar bear researchers (Aars, unpublished data) found that females with small cubs swim much less than lone females in the spring. In the southern Beaufort Sea, females with cubs-of-the-year show a strong preference, following den emergence, for stable, shore-fast ice presumably to protect the cubs from adverse sea and ice conditions and adult male polar bears (Stirling *et al.* 1993, pp. 20–21; Stirling and Lunn 1997, p. 177; Amstrup *et al.* 2006b, p. 1,000). Adult females with cubs-of-the-year overall have smaller annual activity areas than do single females (Amstrup *et al.* 2000b, p. 960; Mauritzen *et al.* 2001, p. 1,710).

Pregnant females select den locations that have access to adequate prey before and after denning and that will provide a safe environment from adult males (which occasionally kill cubs (Derocher and Wiig 1999, p. 308) and females (Amstrup *et al.* 2006b, p. 998)), human disturbance, and adverse weather conditions for their cubs. Consequently, we have determined that terrestrial denning habitat includes the following features essential to the conservation of the species: coastal bluffs and river banks with (a) steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; (c) sea ice in proximity of terrestrial denning habitat prior to the onset of denning during the fall to provide access to terrestrial den sites; and (d) the absence of disturbance from humans and human activities that may attract other bears.

Habitats Protected From Disturbance or Representative of the Historic, Geographical, and Ecological Distributions of the Species

Coastal barrier islands and spits off the Alaska coast provide areas free from human disturbance and are important for denning, resting, and migration along the coast. During fall surveys along the northern coast of Alaska from Barrow to the United States-Canada border (2000–2007), 82 percent of the bears detected have occurred on the barrier islands, 11 percent on the mainland, 6 percent on the shore-fast ice, and 1 percent in the water (USFWS, unpublished data). Polar bears regularly use barrier islands to move along the Alaska coast as they traverse across the open water, ice, and shallow sand bars between the islands. Barrier islands that have been used multiple times for denning include Flaxman Island, Pingok Island, Cottle Island, Thetis Island, and

Cross Island (Amstrup, unpublished data; USFWS 1995, p. 27). Historically, except for denning, polar bears in the United States spend almost the entire year on the sea ice and very little time on land. However, in recent years, the number of bears using the coastal areas, particularly during the summer and fall, has increased (Schliebe *et al.* 2008, p. 2). This may reflect the increase of the open-water period during the summer and early fall in addition to the retreat of the sea ice beyond the continental shelf (Zhang and Walsh 2006, pp. 1,745–1,746; Serreze *et al.* 2007, pp. 1,533–1,536; Stroeve *et al.* 2007, pp. 1–5). Thus, the importance of barrier island habitat, particularly during the summer and fall, is likely to increase.

Typically, polar bears avoid humans. This is demonstrated by the areas where they choose to rest, their den site locations, and their avoidance of snow machines (Anderson and Aars 2008, p. 503). For example, polar bears attracted to subsistence-harvested bowhead whale carcasses on Barter Island, Alaska, swim across the lagoon and rest on Bernard and Jago spits during the day (Miller *et al.* 2006, p. 9) rather than resting on Barter Island closer to the food resource. Also, polar bears tend to avoid denning in areas where active oil and gas exploration, development, and production activities are occurring. In addition, Anderson and Aars (2008, p. 503) report that polar bear females and cubs at Svalbard react to snowmobiles at a mean distance of 1,534 m (5,033 ft).

Within the range of the polar bear population, barrier islands are currently used for denning by parturient females, as a place to avoid human disturbance, and to move along the coast to access den sites or preferred feeding locations. We define barrier island habitat as the barrier islands off the coast of Alaska, their associated spits, and the no-disturbance zone (area extending out 1.6 km (1 mi) from the barrier island mean high tide line). A 1.6-km (1-mi) distance was chosen because this distance approximates the mean distance females and cubs reacted to snowmobiles at Svalbard (Andersen and Aars 2008, p. 503), and because adult females are the most important age and sex class in the population. We conclude that barrier island habitat, as undisturbed areas for resting, denning, and movement along the coast, is a physical feature essential to the conservation of polar bears in the United States.

Primary Constituent Elements for Polar Bear in the United States

Based on the needs identified above and our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent elements (PCEs) for the polar bear in the United States are:

(1) Sea ice habitat used for feeding, breeding, denning, and movements, which is sea ice over waters 300 m (984.2 ft) or less in depth that occurs over the continental shelf with adequate prey resources (primarily ringed and bearded seals) to support polar bears.

(2) Terrestrial denning habitat, which includes topographic features, such as coastal bluffs and river banks, with suitable macrohabitat characteristics. Suitable macrohabitat characteristics are: (a) Steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; (c) sea ice in proximity of terrestrial denning habitat prior to the onset of denning during the fall to provide access to terrestrial den sites; and (d) the absence of disturbance from humans and human activities that might attract other polar bears.

(3) Barrier island habitat used for denning, refuge from human disturbance, and movements along the coast to access maternal den and optimal feeding habitat. This includes all barrier islands along the Alaska coast and their associated spits, within the range of the polar bear in the United States, and the water, ice, and terrestrial habitat within 1.6 km (1 mi) of these islands (no-disturbance zone).

We are designating three critical habitat units based on the three PCEs described above. We designate these units based on sufficient PCEs being present to support at least one of the species' essential life-history functions. Each unit contains at least one of the three PCEs.

Special Management Considerations or Protection

When designating critical habitat within the geographical area occupied by the species, we assess whether the physical and biological features essential to the conservation of the species may require special management considerations or protection. Potential impacts that could harm the identified essential physical and biological features include reductions in the extent of arctic sea ice due to climate change; oil and gas exploration, development, and production; human disturbance; and commercial shipping. We discuss some of these threats to the essential features below.

Reduction in Sea Ice Due to Climate Change

Sea ice is rapidly diminishing throughout the Arctic, and declines in optimal polar bear sea-ice habitat have already been documented in the southern Beaufort and Chukchi Seas between 1985–1995 and 1996–2006 (Durner *et al.* 2009a, p. 45). In addition, it is predicted that some of the largest declines in optimal polar bear sea-ice habitat in the 21st century will occur in the Chukchi and southern Beaufort Seas (Durner *et al.* 2009a, p. 45). Patterns of increased temperatures, earlier onset of thawing and longer melting periods, later onset of freeze-up, increased rain-on-snow events (rain in late winter which may cause snow dens to collapse and result in mortality of the denning bears (adults and cubs)), and potential reductions in snowfall are occurring. Further, positive feedback systems (i.e., the sea-ice albedo feedback mechanism, described below) and changing ocean and atmospheric circulation patterns can operate to amplify the warming trend. The sea-ice albedo feedback effect is the result of a reduction in the extent of brighter, more reflective sea ice or snow, which reflects solar energy back into the atmosphere, and a corresponding increase in the extent of darker, more heat-absorbing water or land that absorbs more of the sun's energy. This greater absorption of energy causes faster melting of ice and snow, which in turn causes more warming, and thus creates a self-reinforcing cycle or feedback loop that becomes amplified and accelerates with time. Lindsay and Zhang (2005, p. 4,892) suggest that the sea-ice albedo feedback mechanism caused a tipping point in arctic sea ice thinning in the late 1980s, sustaining a continual decline in sea-ice cover that cannot be easily reversed. As a result of changes to the sea-ice habitat due to climate change, there is fragmentation of sea ice, a dramatic increase in the extent of open water areas seasonally, a reduction in the extent and area of sea ice in all seasons, a retraction of sea ice away from productive continental shelf areas throughout the Polar Basin, a reduction of the amount of thicker and more stable multi-year ice, and declining thickness and quality of shore-fast ice (Parkinson *et al.* 1999, pp. 20,840, 20,849; Rothrock *et al.* 1999, p. 3,469; Comiso 2003, p. 3,506; Fowler *et al.* 2004, pp. 71–74; Lindsay and Zhang 2005, p. 4,892; Holland *et al.* 2006, pp. 1–5; Comiso 2006, p. 72; Serreze *et al.* 2007, pp. 1,533–1,536; Stroeve *et al.* 2008, p. 13). These events are interrelated and combine to decrease the extent and

quality of sea ice as polar bear habitat during all seasons, and particularly during the spring–summer period. Lastly, it is predicted that Arctic sea ice will likely continue to be affected by climate change for the foreseeable future (IPCC 2007, p. 49; J. Overland, NOAA, in comments to the USFWS, 2007; May 18, 2008, 73 FR 28239).

Polar bear populations in the Chukchi Sea, Barents Sea, southern Beaufort Sea, Kara Sea, and Laptev Sea (the Divergent Ice Ecoregion) will, or are currently, experiencing the initial effects of changes in sea ice (Rode *et al.* 2007, p. 12; Regehr *et al.* 2007b, pp. 18–19; Hunter *et al.* 2007, p. 19; Amstrup *et al.* 2008, pp. 239–240). These populations are vulnerable to large-scale dramatic seasonal fluctuations in ice movements, decreased access to abundant prey, and increased energetic costs of hunting. These concerns were punctuated by the record minimum summer ice conditions in September 2007, when vast ice-free areas encroached into the central Arctic Basin, and the Northwest Passage was open for the first time in recorded history. The record low sea-ice conditions of 2007, 2009, and 2010 extend an accelerating trend in habitat loss, and further support a concern that current sea-ice models may be conservative and underestimate the rate and level of sea-ice loss in the future (Stroeve *et al.* 2007, p. 9; Stroeve *et al.* 2006, p. 371,373; *http://nsidc.org/arcticseaicenews/* viewed on September 21, 2010).

While we recognize that climate change will negatively affect optimal sea-ice habitat for polar bears, the underlying causes of climate change are complex global issues that are beyond the scope of the Act. However, we will continue to evaluate any special management considerations or protection that may be needed for polar bears and their habitat.

Petroleum Hydrocarbons

Pollution from various potential sources, including oil spills from vessels, or discharges from oil and gas drilling and production, could render areas containing the identified physical and biological features unsuitable for use by polar bears, effectively negating the conservation value of these features. Because of the vulnerabilities to pollution sources, these features may require special management considerations or protection through such measures as placing conditions on Federal permits or authorizations to stimulate special operational restraints, mitigative measures, or technological changes.

Petroleum hydrocarbons come from both natural and anthropogenic sources. The primary natural source is oil seeps. The Arctic Monitoring and Assessment Programme (AMAP) (2007, p. 18) notes that "natural seeps are the major source of petroleum hydrocarbon contamination in the arctic environment." Anthropogenic sources include activities associated with exploration, development, and production of oil (well blowouts, operational discharges); ship- and land-based transportation of oil (oil spills from pipelines, accidents, leaks, and ballast washings); discharges from refineries and municipal waste water; and combustion of fossil fuels.

Polar bears' range overlaps with many active and planned oil and gas operations within 40 km (25 mi) of the coast. In the past, no major oil spills of more than 3,000 barrels have occurred in the marine environment within the range of polar bears. Oil spills associated with terrestrial pipelines have occurred in the vicinity of polar bear habitat, including denning areas (*e.g.,* Russian Federation, Komi Republic, 1994 oil spill, *http://www.american.edu/ted/KOMI.HTM*). Despite numerous safeguards to prevent spills, they do occur. An average of 70 oil and 234 waste product spills per year occurred between 1977 and 1999 in the North Slope oil fields (71 FR 14456; March 22, 2006). Many spills are small (less than 50 barrels) by oil and gas industry standards, but larger spills (greater than or equal to 500 barrels) account for much of the annual volume. The largest oil spill to date on the North Slope oil fields in Alaska (estimated volume of approximately 4,786 barrels [one barrel = approx. 42 gallons]) occurred on land in March 2006, and resulted from an undetected leak in a corroded pipeline (*see* State of Alaska Prevention and Emergency Response Web site at *http://www.dec.state.ak.us/spar/perp/response/sum_fy06/060302301/060302301_index.htm*).

The MMS (now BOEMRE) (2004, pp. 10, 127) estimated an 11 percent chance of a marine spill greater than 1,000 barrels in the Beaufort Sea from the Beaufort Sea Multiple Lease Sale in Alaska. The MMS prepared an environmental impact statement (EIS) on the *Chukchi Sea Planning Area; Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea,* and MMS determined that polar bears and their habitat could be affected by both routine activities and a large oil spill (MMS 2007, pp. ES 1–10). Regarding routine activities, the EIS determined that small numbers of polar bears could be affected by "noise and other disturbance caused by exploration, development, and production activities" (MMS 2007, p. ES–4). Data provided by monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea, as required under the MMPA incidental take authorizations for oil and gas activities, have shown that mitigation measures have successfully minimized impacts to polar bears. For example, since the first incidental take regulations became effective in the Chukchi and Beaufort Seas (in 1991 and 1993, respectively), there has been no known instance of a polar bear being killed. The EIS also evaluated events that would be possible over the life of the hypothetical development and production that could follow the lease sale, and estimated that "the chance of a large spill greater than or equal to 1,000 barrels occurring and entering offshore waters is within a range of 33 to 51 percent." If a large spill were to occur, the analysis conducted as part of the EIS process identified potentially significant impacts to polar bears occurring in the area affected by the spill; the evaluation was done without regard to the effect of mitigating measures (MMS 2007, p. ES–4). An oil spill in the Arctic, similar to the recent catastrophic oil spill from the Deepwater Horizon rig in the Gulf of Mexico, would be more difficult to control and clean up effectively due to the extreme Arctic conditions, fewer resources available locally to respond to such a spill, and the difficulty accessing these very remote areas. The Deepwater Horizon spill demonstrates the importance for oil and gas operators working in the offshore environment to have an adequate quantity of resources on hand to respond to a potential large spill (*e.g.,* skimmers, oil booms, and updated oil spill response plans).

Oil spills in the fall or spring during the formation or break-up of sea ice present a greater risk to polar bear habitat because of difficulties associated with clean-up during these periods, and the presence of bears in the prime feeding areas over the continental shelf. Amstrup *et al.* (2000a, p. 5) concluded that the release of oil trapped under the ice from an underwater spill during the winter could be catastrophic during spring break-up if bears were present. During the autumn freeze-up and spring break-up periods, any oil spilled in the marine environment would likely concentrate and accumulate in open leads and polynyas, areas of high activity for both polar bears and seals (Neff 1990, p. 23). This would result in an oiling of both polar bears and seals

(Neff 1990, pp. 23–24; Amstrup *et al.* 2000a, p. 3; Amstrup *et al.* 2006a, p. 9).

Historically, oil and gas activities have resulted in little direct mortality to polar bears, and the mortality that has occurred has been associated with human-bear interactions rather than spill events. However, oil and gas activities are increasing as development continues to expand throughout the U.S. Arctic and internationally, including in polar bear terrestrial and marine habitats. Offshore oil and gas exploration, development, and production activities in Alaska and adjacent territorial and U.S. waters increase the potential for disturbance of polar bears, their nearshore sea-ice habitat, and the relatively pristine barrier islands used for refuge, denning, and movements. The greatest threat of future oil and gas development is the potential effect of an oil spill or discharges into the marine environment on polar bears or their habitat. In addition, disturbance from activities associated with oil and gas activities can result in direct or indirect effects on polar bear use of habitat. Direct disturbances include displacement of bears or their primary prey (ringed and bearded seals) due to the movement of equipment, personnel, and ships through polar bear habitat. Direct disturbance may cause abandonment of established dens before cubs are able to survive outside the den. Female polar bears tend to select secluded areas for denning, presumably to minimize disturbance during the critical period of cub development. Expansion of the network of roads, pipelines, well pads, and infrastructure associated with oil and gas activities may force pregnant females into marginal denning locations (Lentfer and Hensel 1980, p. 106; Amstrup *et al.* 1986, p. 242). The potential effects of human activities are much greater in areas where there is a high concentration of dens such as Wrangel Island, one of the principal denning areas for the Chukchi-Bering Seas population (Kochnev 2006, p. 163). Oil spills, however, are a concern for polar bears throughout their range.

The National Research Council (NRC 2003, p. 169) evaluated the cumulative effects of oil and gas development in Alaska and concluded the following related to polar bears and ringed seals:

- Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears.
- Careful mitigation can help to reduce the negative effects of oil and gas development, especially if there are no major oil spills. However, full-scale industrial development of waters off the North Slope would increase the negative effects to polar bears through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success.
- A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals.
- Climatic warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will increase with the effects of oil and gas activities in the region.
- Unless studies to address the potential increase of and cumulative effects of North Slope oil and gas activities on polar bears or ringed seals are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes.

Some alteration of polar bear habitat has occurred from oil and gas development, seismic exploration, or other activities in denning areas. Potential oil spills in the marine environment and expanded activities increase the potential for additional changes to polar bear habitat (Amstrup 2000, pp. 153–154). Any such impacts would be additive to other factors already or potentially affecting polar bears and their habitat.

Special management considerations and protection may be needed to minimize the risk of crude oil spills and human disturbance associated with oil and gas development and production, oil and gas tankers, and potential commercial shipping along the Northern Sea Route to polar bears and the habitat features essential to their conservation.

Shipping and Transportation

Observations over the past 50 years show a decline in arctic sea-ice extent in all seasons, with the most prominent retreat occurring in the summer (Stroeve *et al.* 2007, p. 1). Climate models project an acceleration of this trend with periods of extensive melting in spring and autumn, which would open new shipping routes and extend the period that shipping is feasible (ACIA 2005, p. 1,002). Notably, the navigation season for the Northern Sea Route (across northern Eurasia) is projected to increase from 20–30 days per year to 90–100 days per year. Russian scientists cite increasing use of the Northern Sea Route for transit and regional development as a major source of disturbance to polar bears in the Russian Arctic (Wiig *et al.* 1996, pp. 23–24; Belikov and Boltunov 1998, p. 113; Ovsyanikov 2005, p. 171). Commercial shipping using the Northern Sea Route, especially if it required the use of ice breakers to maintain open shipping lanes, could disturb polar bear feeding and other behaviors, increase the risk of oil spills (Belikov *et al.* 2002, p. 87), and potentially alter optimal polar bear sea-ice habitat.

Increased shipping activity may disturb polar bears in the marine environment, adding additional energetic stresses. If ice-breaking activities occur, these activities may alter essential features used by polar bears, possibly creating ephemeral lead systems and concentrating ringed seals within the refreezing leads. This, in turn, may allow for easier access to ringed seals and may have some beneficial value to polar bears. Conversely, this may cause polar bears to use areas that may have a higher likelihood of human encounters as well as increased likelihood of exposure to oil or waste products that are intentionally or accidentally released into the marine environment. If shipping involved the tanker transport of crude oil or oil products, there would be an increased likelihood of small- to large-volume spills and corresponding oiling of essential sea-ice and terrestrial habitat features, polar bears, and seal prey species (AMAP 2005, pp. 91, 127).

The Polar Bear Specialist Group (PBSG) recognized the potential for increased shipping and marine transportation in the Arctic with declining seasonal sea-ice conditions (Aars *et al.* 2006, pp. 22, 58, 171). The PBSG recommended that the parties to the 1973 *Agreement on the Conservation of Polar Bears* take appropriate measures to monitor, regulate, and mitigate shipping traffic impacts on polar bear populations and habitats (Aars *et al.* 2006, p. 58).

Summary of Anthropogenic Threats to Features Essential to the Conservation of the Polar Bear Which May Require Special Management Considerations or Protection

Increased human activities include an expansion of the level of oil and gas exploration, development, and production onshore and offshore, and potential increases in shipping. Individually as well as cumulatively, these activities may result in alteration of polar bear habitat and features essential to their conservation. Any potential impact from these activities would be additive to other factors already or potentially affecting polar bears and their habitat. We acknowledge that the sum total of documented direct impacts from these activities in the past

has been minimal. We also acknowledge that national and local concerns for these activities have resulted in the development and implementation of regulatory programs to monitor and reduce potential effects. For example, the MMPA allows for incidental, non-intentional take (harassment) of small numbers of polar bears during specific activities. Specifically, section 101(a)(5) of the MMPA gives the Service the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. Under the authority of this section of the MMPA, the Service administers an incidental take program that allows polar bear managers to work cooperatively with oil and gas operators to minimize impacts of their activities on polar bears. The Service evaluates each request for a Letter of Authorization (LOA) under the MMPA incidental take program with special attention to mitigating impacts to polar bears, such as limiting industrial activities around barrier island habitat, which is important for polar bear denning, feeding, resting, and seasonal movements. Incidental take cannot be authorized unless the Service finds that the total of such taking will have no more than a negligible impact on the species and, for species found in Alaska, will not have an unmitigable adverse impact on the availability of the species for taking for subsistence use by Alaska Natives.

If any take that is likely to occur will be limited to nonlethal harassment of the species, the Service may issue an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA. The IHAs cannot be issued for a period longer than one year. If the taking may result in more than harassment, regulations under section 101(a)(5)(A) of the MMPA must be issued, which may be in place for no longer than 5 years. Once regulations making the required findings are in place, we issue LOAs that authorize the incidental take consistent with the provisions in the regulations. In either case, the IHA or the regulations must set forth: (1) Permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

These incidental take programs under the MMPA currently provide a greater level of protection for the polar bear than equivalent procedures under the Act. Negligible impact under the MMPA, as defined at 50 CFR 18.27(c), is an impact resulting from a specific activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species through effects on annual rates of recruitment or survival. This is a more protective standard than that afforded by the Act. In addition, the authorizations under the MMPA are limited to one year for IHAs and 5 years for regulations, thus ensuring that activities that are likely to cause incidental take are periodically reviewed and mitigation measures that ensure that take remains at the negligible level can be updated.

In the consideration of IHAs or the development of incidental take regulations, the Service conducts an intra-Service consultation under section 7(a)(2) of the Act to ensure that providing an MMPA incidental take authorization is not likely to jeopardize the continued existence of the polar bear. Because the standard for approval of an IHA or the development of incidental take regulations under the MMPA is no more than "negligible impact" to the affected marine mammal species, we expect that any MMPA-compliant authorization or regulation would meet the Act's section 7(a)(2) standards of ensuring that the action is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of designated critical habitat. In addition, we anticipate that any proposed action(s) would augment protection and enhance agency management of the polar bear through the application of site-specific mitigation measures contained in authorization issued under the MMPA.

The incidental take regulations for polar bears are an example of an application of the MMPA associated with onshore and offshore oil and gas exploration, development, and production activities in Alaska. Since 1991, affiliates of the oil and gas industry have requested, and we have issued regulations for, incidental take authorization for activities in areas of polar bear habitat. This includes regulations issued for incidental take in the Chukchi Sea for the periods 1991–1996, and June 11, 2008–June 11, 2013 (73 FR 33212), and regulations issued for incidental take in the Beaufort Sea from 1993 to the present. A detailed history of our past regulations for the Beaufort Sea region can be found in our final rule published on August 2, 2006 (71 FR 43926).

The mitigation measures that we have required for all oil and gas projects include a site-specific plan of operation and a site-specific polar bear interaction plan. Site-specific plans outline the steps the applicant will take to minimize impacts on polar bears, such as garbage disposal and snow management procedures to reduce the attraction of polar bears, an outlined chain-of-command for responding to any polar bear sighting, and polar bear awareness training for employees. The training program is designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Most often, the appropriate response involves merely monitoring the animal's activities until it moves out of the area. However, personnel may be instructed to leave an area where bears are seen. If it is not possible to leave, the bears can be displaced by using forms of deterrents, such as a vehicle, vehicle horn, vehicle siren, vehicle lights, spot lights, or, if necessary, pyrotechnics (*e.g.,* cracker shells). The intent of the interaction plan and training activities is to allow for the early detection and appropriate response to polar bears that may be encountered during operations, which eliminates the potential for injury or lethal take of bears in defense of human life. By requiring such steps be taken, we ensure any impacts to polar bears will be minimized and will remain negligible.

Additional mitigation measures are also required on a case-by-case basis depending on the location, timing, and specific activity. The types of mitigation measures that we have required include: Trained marine mammal observers for offshore activities; pre-activity surveys (*e.g.,* aerial surveys, infra-red thermal aerial surveys, polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity; measures to protect pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs), including incorporation of a 1.6-km (1-mi) buffer surrounding known dens; and enhanced monitoring or flight restrictions. Detailed denning habitat maps, combined with information on denning chronology and remote den detection methods such as forward-looking infrared (FLIR) imagery, facilitate managing human activities associated with oil and gas operations to minimize disturbances to female polar bears during this critical denning period (Durner *et al.* 2001, p. 19; Amstrup *et al.* 2004b, p. 343; Durner *et al.* 2006b, p. 34). These mitigation measures are implemented to limit human-bear interactions and disturbances to bears and have ensured that industry effects

on polar bears have remained at the negligible level.

Incidental take regulations under the MMPA have been issued since 1991 and 1993 in the Chukchi and Beaufort Seas, respectively. The regulations typically extend for a 5-year period. The current regulatory period for the Beaufort Sea is August 2, 2006, to August 2, 2011, and for the Chukchi Sea is June 11, 2008, to June 11, 2013. The 5-year regulatory duration is to allow the Service (with public review) to periodically assess whether the level of activity continues to have a negligible impact on polar bears, their habitat, and their availability for subsistence uses.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of polar bears in the United States, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of polar bears. Information sources included articles in peer-reviewed journals, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion. We are not currently proposing any areas outside the geographical area presently occupied by the species because occupied areas are sufficient for the conservation of polar bears in the United States.

We have also reviewed available information that pertains to the habitat requirements of this species. During the process of preparing our critical habitat designation for polar bears in the United States, we reviewed the relevant information available, including peer-reviewed journal articles, the final listing rule, unpublished reports and materials (such as survey results and expert opinions), and regional maps that have been digitized in ArcGIS Geographic Information System (GIS) coverages.

We are designating critical habitat for polar bears in the United States in areas occupied at the time of listing that are defined by physical and biological features essential to the conservation of polar bears in the United States and which may require special management considerations or protection. We considered qualitative criteria in the selection of specific essential features for polar bear critical habitat in the United States. These criteria focused on: (1) Identifying specific areas where polar bears consistently occur, such as the ice edge near flaw zones, leads, or polynyas, or denning areas near the coast; and (2) identifying specific areas where polar bears are especially vulnerable to disturbance during denning and the open-water period.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the features essential for polar bear conservation. We are not including existing manmade structures in the final critical habitat designation because they generally do not contain the physical or biological features essential to the conservation of the species. Therefore, we have determined that manmade structures on all types of land ownership do not meet the criteria to be considered critical habitat for polar bears, or the definition of critical habitat in section 3(5)(a) of the Act, and should not be included in the final designation. Examples of structures that are not included as part of designated critical habitat include: Houses, gravel roads, airport runways and facilities, pipelines, central processing facilities, saltwater treatment plants, well heads, pump jacks, housing facilities or hotels, generator plants, construction camps, pump stations, stores, shops, piers, docks, jetties, seawalls, and breakwaters on the lands owned or leased by the oil and gas industry, USAF lands, and local communities that overlap with this final critical habitat designation for polar bears in Alaska.

The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect that such developed lands are not included in the final critical habitat designation. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been removed by text in the final rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger a section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the essential features in the adjacent critical habitat.

Sea-Ice Habitat Criteria

The sea-ice habitat considered essential for polar bear conservation is that which is located over the continental shelf at depths of 300 m (984.2 ft) or less. The location of this sea-ice habitat varies geographically, depending foremost on the time of year (season) and secondarily on regional or local weather and oceanographic conditions. During spring and summer, the essential sea-ice habitat follows the northward progression of the ice edge as it retreats northward. Conversely, during autumn, the essential sea-ice habitat follows the southward progression of the ice edge as it advances southward. Use by polar bears of specific areas of sea-ice habitat varies daily and seasonally with the advance and retreat of the sea ice over the continental shelf (Durner *et al.* 2004, pp. 16–20; Durner *et al.* 2006a, pp. 27–30). The duration that any given location maintains the sea-ice PCE varies annually, depending on the rate of ice melt (or freeze), as well as local wind and ocean current patterns that dictate the directions and rates of ice drift.

Mapping specific sea-ice habitat is impracticable because it is dynamic and highly variable on both temporal and spatial scales. Sea-ice distribution and composition vary within and among years. For example, sea-ice conditions that are characteristic of polar bear optimal feeding habitat vary depending on the wind, currents, weather, location, and season. Therefore, sea ice that was optimal at one time may not be at another, nor will it necessarily be the same from year-to-year during the same month.

We used the area occupied by the polar bear in the United States, and, within that area, the extent of the continental shelf, as criteria to identify critical habitat containing essential sea-ice features. Because we are limited to designating critical habitat to lands and waters within the jurisdiction of the United States, in some areas we also used the outer extent of the Exclusive Economic Zone of the United States and the International Date Line (the United States-Russia boundary) as the boundary of designated critical habitat.

Terrestrial Denning Habitat Criteria

Polar bears in the United States create maternal dens in snowdrifts. The northern coastal plain in Alaska is relatively flat, and thus any areas with sufficient relief, such as coastal bluffs, river banks, and even small cut banks and streams that catch the drifting snow, may provide suitable denning habitat. The most frequently used denning habitat on the coastal plain of Alaska is along coastal bluffs and river banks. Macrohabitat characteristics of the sites chosen for snow dens were steep, stable slopes (mean = 40°, SD = 13.5°, range 15.5–50.0°), with heights ranging from 1.3 to 34 m (mean = 5.4 m, SD = 7.4) (4.3 to 111.6 ft, mean = 17.7 ft, SD = 24.3), with water or relatively level ground below the slope and

relatively flat terrain above the slope (Durner *et al.* 2001, p. 118; Durner *et al.* 2003, p. 60). Although the river banks and coastal bluffs were most frequently used as denning habitat, more subtle microhabitat features such as deep narrow gullies, dry stream channels (usually some distance from an active stream channel), and broad vegetated seeps that occurred in relatively flat tundra are also used (Durner *et al.* 2001, p. 118; Durner *et al.* 2003, p. 61). Remarkably, banks with as little as 1.3 m (4.3 ft) of relief contained dens. The common features in many of the dens in these areas were the presence of sea ice within 16 km (10 mi) of the coast and the ability of the terrain to catch enough drifting snow to be suitable for den construction. Although polar bears from the Chukchi-Bering Seas population historically denned in Russia on Wrangel Island and the Chukotka Peninsula, recent changes in the sea-ice formation patterns (Rigor *et al.* 2002, p. 2,660; Rodrigues 2008, p. 141; Markus *et al.* 2009, p. C12023–C12024) have resulted in the sea ice receding even farther north during the fall, which further precludes access to coastal denning areas in Alaska prior to winter.

In northern Alaska from the United States-Canada border to Barrow, high-density terrestrial denning habitat up to about 40 km (25 mi) from the mainland coast has been identified (Durner *et al.* 2001, p. 119; Durner *et al.* 2003, p. 59; Durner *et al.* 2006b, p. 34; Durner *et al.* 2009b, p. 5). Detailed denning habitat data from the United States-Canada border to about 28.5 km (17.4 mi) southeast of Barrow, Alaska, has been mapped, but only data for the area from the United States-Canada border to the Colville River Delta has been field verified and peer reviewed. Denning habitat data on barrier islands is also available for this section of the coastline. The detailed denning habitat information in the area between the Colville River Delta to approximately 28.5 km (17.4 mi) southeast of Barrow, Alaska, will be available following field-verification and peer-review. Based on the habitat characteristics of the den sites (which we describe above), the North Slope contains large potential areas of denning habitat.

To determine high-use coastal denning areas in Alaska, we established selection criteria to determine the core denning areas. We defined the maximum inland extent of critical denning habitat to be the distance from the coast, measured in 8-km (5-mi) increments, in which 95 percent of all historical confirmed and probable dens have occurred east of Barrow, Alaska (Durner *et al.* 2009b, p. 5). We determined the inland extent of the terrestrial denning habitat from an analysis of confirmed and probable polar bear maternal dens by radio-telemetry between 1982 and 2009 (Durner *et al.* 2009b, p. 3). Based on the preference by pregnant females to select den sites relatively near the coast, we expect that polar bears from the Chukchi-Bering Seas population will continue their normal behavior of traveling with receding pack ice to den sites in Russia. We did not include potential terrestrial or barrier island denning habitat in western Alaska in this critical habitat designation for the polar bear. Access to coastal denning habitat areas is an essential feature of critical habitat because large expanses of open water and the timing of ice freeze-up can prohibit polar bear denning. On Hopen Island, the southernmost island of Svalbard, Norway, polar bears do not den when the sea ice freezes too late (Derocher *et al.* 2004, p. 166). Fischbach *et al.* (2007, p. 1,402) concluded that terrestrial denning is restricted by greater open-water fetch and Bergen *et al.* (2007, p. 5) predicted an increasing trend during the 21st century in the distances between the summer sea-ice habitat and terrestrial denning habitat in northeast Alaska. Historically polar bears from the Chukchi-Bering Seas population have not had access to denning habitat in western Alaska and thus have selected terrestrial denning sites on Wrangel Island and the Chukotka Peninsula when the sea ice is at its minimum extent in the fall. We assume that the energetic demands placed on pregnant polar bears having to swim great distances from summer foraging habitats to suitable terrestrial denning habitats in the fall precludes denning in western Alaska. While we recognize that the coastal areas from Barrow southward to the Seward Peninsula have characteristics that appear to allow for the formation of denning habitat, radio-telemetry data indicate that, historically, few bears have denned there. Therefore, we determined that coastal mainland and barrier island terrestrial habitat in western Alaska from Barrow southward to the Seward Peninsula is not accessible to pregnant polar bears from the Chukchi-Bering Seas population in the fall, whereas terrestrial habitats in northern Alaska have been historically, and currently are, available to pregnant polar bears from the southern Beaufort Sea population for denning.

Barrier Island Habitat Criteria

Barrier islands range from small sandy islands just above sea level to larger tundra-covered islands that can support polar bear dens. The distance between the barrier islands and the mainland can vary from 100 m to 50 km (328 ft (ft) to 31 mi). Although less dynamic than sea-ice habitat, barrier islands are constantly shifting due to erosion and deposition from wave action during storms, ice scouring, currents, and winds. The location of the barrier islands generally parallels the mainland coast of Alaska. However, the barrier islands are not evenly distributed along the coast. They often occur in relatively discrete island groups such as Jones Islands between Olitkok Point and Prudhoe Bay or the Plover Islands east of Point Barrow. Polar bears use barrier islands as migration corridors and move freely between the islands by swimming or walking on the ice or shallow sand bars. Since they also use barrier islands to avoid human disturbance, we have included the ice, marine waters, and terrestrial habitat within 1.6 km (1 mi) of the mean high tide line of the barrier islands as part of the barrier island habitat (no-disturbance zone).

We included spits of land in the barrier island habitat category. Spits are attached to the mainland but extend out into the ocean and often are an extension of the barrier islands themselves. These spits were included because they have the same characteristics of the main barrier islands with which they are associated.

Final Critical Habitat Designation

We are designating three critical habitat units for polar bear populations in the United States. You can view detailed, colored maps of areas designated as critical habitat in this final rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm.* You can obtain hard copies of maps by contacting the Marine Mammals Management Office (*see* **FOR FURTHER INFORMATION CONTACT**).

The critical habitat units we describe below constitute our current assessment, based on the best available science, of areas that meet the definition of critical habitat for polar bears in the United States. Table 1 shows the occupied units. The three units we are designating as critical habitat are: (1) Sea-ice Habitat; (2) Terrestrial Denning Habitat; and (3) Barrier Island Habitat.

TABLE 1—OCCUPANCY OF DESIGNATED CRITICAL HABITAT UNITS BY POLAR BEARS

Unit	Occupied at time of listing	Currently occupied	Estimated size of area in km[2] (mi[2])	State/federal/native ownership ratio (percent)[2]
(1) Sea-ice Habitat	Yes	Yes	464,924 (179,508)	8/92/0
(2) Terrestrial Denning Habitat	Yes	Yes	14,652 (5,657)	20/74/6
(3) Barrier Island Habitat	Yes	Yes	10,576 (4,083)	64/18/18
Total			484,734[1] (187,157)[1]	9/90/1

[1] The total acreage reported is less than the sum of the three units because Unit 3 slightly overlaps Units 1 and 2.
[2] State-selected and Native-selected lands are considered Federal lands. State and Native-selected lands are those lands that have been selected but not yet conveyed from the Federal Government.

Below, we present brief descriptions of all critical habitat units, and reasons why they meet the definition of critical habitat and are included in this final rule. Calculations of sea-ice habitat are from GIS data layers of hydrographic survey data compiled by the National Oceanic and Atmospheric Administration (NOAA), the U.S. Geological Survey, and the U.S. Fish and Wildlife Service.

With regard to ownership of the marine area covered by the sea-ice habitat, the waters of the State of Alaska extend seaward from the mean high tide line for 5.6 nautical-kilometers (3 nautical-miles (nm)) and have been mapped by NOAA (*http://www.nauticalcharts.noaa.gov/csdl/mbound.htm*). Federal waters extend from the 5.6 nautical-km (3 nm) State boundary out to the U.S. 370.7 nautical-km (200 nm) Exclusive Economic Zone (EEZ) (Table 2), and include the territorial waters of the United States (a subset of the EEZ, which extends from the State boundary to 22.2 nautical-km (12 nm) out).

TABLE 2—OWNERSHIP STATUS OF CRITICAL HABITAT UNITS FOR POLAR BEARS IN THE UNITED STATES

Area	Federal[1] (percent)	State (percent)	Private (percent)	Alaska Native (percent)
(1) Sea-ice Habitat	92.1	7.9	0.0	0.0
(2) Terrestrial Denning Habitat	74.0	20.0	0.0	6.0
(3) Barrier Island Habitat	17.6	64.3	0.0	18.1
Total[2]	91.0	8.2	0.0	0.58

[1] State-selected and Native-selected lands are considered Federal lands.
[2] The percentages do not add up to 100 percent due the slight overlap between Units 3 and Units 1 and 2.

Unit 1: Sea-Ice Habitat

Unit 1 consists of approximately 464,924 km[2] (179,508 mi[2]) of the sea-ice habitat ranging from the mean high tide line to the 300-m (984.2-ft) depth contour. Because we are limited by 50 CFR 424.12(h) to designating critical habitat only on lands and waters under U.S. jurisdiction, Unit 1 does not extend beyond the U.S. 370.7 nautical-km (200 nm) EEZ to the north, the International Date Line to the west, or the United States–Canada border to the east. To delineate the southern boundary, we used the southern extent of the Chukchi-Bering Seas population as determined by telemetry data (Garner *et al.* 1990, p. 223), because the 300-m (984.2-ft) depth contour extends beyond the southern extent of the polar bear population. The vast majority (92 percent) of Unit 1 is located within Federal waters.

Unit 1 contains PCE number 1, which is required for feeding, breeding, denning, and movements that are essential for the conservation of polar bear populations in the United States. Special management considerations and protection may be needed to minimize the risk of crude oil spills associated with oil and gas development and production, oil and gas tankers, and the risks associated with commercial shipping within this region and along the Northern Sea Route.

Unit 2: Terrestrial Denning Habitat

Unit 2 consists of an estimated 14,652 km[2] (5,657 mi[2]) of land, located along the northern coast of Alaska, with the appropriate denning macrohabitat and microhabitat characteristics (Durner *et al.* 2001, p. 118), as described under "Terrestrial Denning Habitat Criteria" above. The area designated as critical habitat contains approximately 95 percent of the known historical den sites from the southern Beaufort Sea population (Durner *et al.* 2009b, p. 3). The inland extent of denning distinctly varied between two longitudinal zones, with 95 percent of the polar bear dens between the Kavik River and the United States-Canada border occurring within 32 km (20 mi) of the mainland coast, and 95 percent of the dens between the Kavik River and Barrow occurring within 8 km (5 mi) of the mainland coast. We did not identify denning habitat for the Chukchi-Bering Seas population in western Alaska because coastal areas in western Alaska do not contain the "access via sea-ice" component of the terrestrial denning habitat PCE. Historically most of these polar bears den on Wrangel Island and Chukotka Peninsula, Russia. Typically polar bears follow the northerly retreat of the sea ice and are precluded from denning on the western coast of Alaska due to extreme open-water fetch and

late ice freeze-up. Increases in the length of the open-water season along with declines in the sea ice extent will likely exacerbate this phenomenon.

Twenty percent, 74 percent, and 6 percent of Unit 2 is located within State of Alaska land, Federal lands, and Native-owned lands, respectively. In addition, 53.3 percent of the land included within Unit 2 occurs within the boundaries of the Arctic National Wildlife Refuge.

Unit 2 contains the necessary topographic, macrohabitat, and microhabitat features identified in PCE 2 that are essential for the conservation of polar bears in the United States. Special management considerations and protection may be needed to minimize the risk of human disturbances and crude oil spills associated with oil and gas development and production, and the risk associated with commercial shipping.

Unit 3: Barrier Island Habitat

Unit 3 consists of an estimated 10,576 km^2 (4,083 mi^2) of barrier island habitat. Barrier island habitat includes the barrier islands themselves and associated spits, and the water, ice, and any other terrestrial habitat within 1.6 km (1 mi) of the islands. Approximately sixty-four percent of Unit 3 consists of State of Alaska owned land and jurisdictional waters; 18.1 percent consists of Alaska Native owned land, and 17.6 percent consists of Federal Government owned land.

Unit 3 contains PCE number 3, which is essential for the conservation of polar bear populations in the United States. Coastal barrier islands and spits off the Alaska coast provide areas free from human disturbance and are important for denning, resting, and movements along the coast to access maternal den and optimal feeding habitat. Special management considerations and protection may be needed to minimize the risk of human disturbances, shipping, and crude oil spills associated with oil and gas development and production, oil and gas tankers, and other marine vessels.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any "action" within the meaning of the regulations (50 CFR 402.02) that the agency authorizes, funds, or carries out is not likely to destroy or adversely modify designated critical habitat. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that may result in destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify designated critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a Federal action may affect a species listed under the Act or its designated critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Secretary of the Interior, who is generally responsible for terrestrial species (consulting agency). The Secretary has delegated his responsibilities to the Service in the case of Interior. The Secretary of the Interior has jurisdiction over the polar bear (50 CFR 402.01(b)).

Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of either:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are also variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or have subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Following the listing of the polar bear as a threatened species on May 15, 2008, the Service conducted an intra-Service consultation under section 7(a)(2) of the Act to ensure that the issuance of Incidental Take Regulations under the MMPA is not likely to jeopardize the continued existence of the polar bear. The Service issued its Programmatic Biological Opinion For Polar Bears (*Ursus maritimus*) On Chukchi Sea Incidental Take Regulations on June 3, 2008, concluding that regulations under

the MMPA will not appreciably reduce the likelihood of survival and recovery of the polar bear, and therefore are not likely to jeopardize the species' continued existence. On June 23, 2008, the Service issued its Programmatic Biological Opinion For Polar Bears On the Beaufort Sea incidental take regulations, similarly concluding that regulations under the MMPA will not appreciably reduce the likelihood of survival and recovery of the polar bear, and therefore are not likely to jeopardize the continued existence of the polar bear.

In issuing these opinions, the Service provided notice that re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if, among other things, a new species is listed or critical habitat is designated that may be affected by the action. Thus, designation of critical habitat for the polar bear would require the Service to re-initiate consultation on these MMPA incidental take regulations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for polar bear populations in the United States.

Section 4(b)(8) of the Act requires us to summarize the data relied upon in developing this rule and how the data relate to the rule. In addition, the summary must, to the maximum extent practicable, include a brief description and evaluation of activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Examples of activities that, when authorized, funded, or carried out, or by a Federal agency, may affect critical habitat and therefore should result in consultation for the southern Beaufort Sea and the Chukchi-Bering Seas polar bear populations in the United States include, but are not limited to:

(1) Actions that would reduce the availability or accessibility of polar bear prey species. Such activities could include, but are not limited to, human disturbance when polar bears are foraging at the ice edge, and displacement of polar bears from optimal sea-ice habitat, particularly during critical feeding periods in the fall or following den emergence in the spring. Activities that reduce availability or accessibility of prey may cause polar bears to forage outside of optimal foraging areas, thus potentially reducing their fitness.

(2) Actions that would directly impact the PCEs. Such activities could include, but are not limited to: Seismic exploration; construction of ice and gravel roads; construction of drilling pads; development of new onshore and offshore production sites; use of helicopters, fixed wing aircraft, boats, snow machines, and vehicles by industry to access sites such as work sites; and increased year-round shipping.

(3) Actions that would render critical habitat areas unsuitable for use by polar bears. Such activities could include, but are not limited to, human disturbance or pollution from a variety of sources, including discharges from oil and gas drilling and production, or spills of crude oil, fuels, or other hazardous materials from vessels, primarily in harbors or other ports. While it is illegal to discharge fuel or other hazardous materials, it happens more often in ports and harbors than in other areas. Additionally, increased vessel traffic and associated ice-breaker activity could negatively affect optimal sea-ice habitat for polar bears. These activities could result in direct mortality or displace polar bears from, or adversely affect, essential sea-ice and denning habitat and habitat free from disturbance (such as barrier islands). Parturient polar bears must be free from disturbance during critical feeding periods prior to denning in the fall and following den emergence in the spring. Disturbance during the critical denning periods or destruction of the denning habitat could result in lower cub survival and recruitment into the population. Declines in recruitment and survival of polar bears, a K-selected species (long-lived species with low reproductive rates), could result in population declines and slow recovery, and could potentially affect the perpetuation of polar bears in the United States.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a *et seq.*) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consulted with the military on the development and implementation of INRMPs for installations with federally listed species. The INRMPs developed by military installations located within the proposed critical habitat areas were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act. Cooperation between the DOD installations and the Service on specific conservation measures relative to polar bears is ongoing.

Approved Integrated Natural Resources Management Plans

We examined the INRMPs for the military installations to determine whether they provide benefits to polar bears. The USAF submitted two INRMPs for review, one for the Inactive Radar Sites and one for the Active Radar Sites. Most of the radar sites that

overlap with the range of polar bears are located in relatively remote locations along the north and west coast of Alaska. These sites occupy relatively small areas and are maintained by a small staff of up to 20 individuals. The USAF lands covered by these INRMPS that overlap with the polar bear critical habitat designation are less than 1 percent of the total polar bear critical habitat designation.

The INRMP for the Inactive Radar Sites, Integrated Natural Resources Management Plan, 2009 Revision—2009 Wetlands & Polar Bear Update, Inactive Sites, Alaska 611th Air Support Group, includes 17 sites in Alaska, of which only Point Lay (former LRRS), Point Lonely (former SRRS), and the West Nome Tank Farm (former LRRS) overlap with the range of polar bears in Alaska. Point Lonely is the only Inactive Site that overlaps with the designated polar bear critical habitat. The Radar Site at Point Lonely is currently undergoing environmental restoration, and once the remedial actions are completed there are long-term plans (2009–2029) to continue monitoring this site.

The INRMP for the Active Radar Sites, *Integrated Natural Resources Management Plan, 2007 Revision—2009 Update, Annual Review, Alaska Radar System, Alaska Short and Long Range Radar Sites, Alaska 611th Air Support Group,* includes 16 radar sites in Alaska, of which 9, Wainwright Short Range Radar Site (SRRS), Point Barrow Long Range Radar Site (LRRS), Oliktok LRRS, Bullen Point SRRS, Barter Island LRRS, Cape Lisburne LRRS, Kotzebue LRRS, Tin City LRRS, and Cape Romanzof LRRS, overlap with the range of polar bears in Alaska. Only Point Barrow LRRS, Oliktok LRRS, Bullen Point LRRS, and Barter Island LRRS Radar Sites overlap with the polar bear critical habitat designation.

The INRMP for the Inactive and Active Sites includes several provisions to protect polar bears. The Base Operational Support (BOS) contractor, working for the Air Force, has requested a Letter of Authorization (LOA) under the MMPA incidental take regulations to allow for the intentional (non-lethal) take of polar bears on a yearly basis. This authorization is related to harassment activities only. This year ARCTEC, the BOS support contractor, requested an LOA for intentional take of polar bears at the USAF which expires December 31, 2010. The ability to haze problem bears from the radar sites helps protect polar bears, because polar bears learn to associate humans with negative consequences.

During the summer of 2009, the USAF developed hazing guidelines to discourage individuals employed by them from prematurely killing a polar bear. Because hunting is not permitted on USAF Short Range and Long Range Radar Sites and because of the additional protections for polar bears under the Act, USAF policy states that if someone shoots a polar bear and cannot present overwhelming evidence for the imminent necessity of lethal take, then that person will likely be liable for civil and criminal prosecution.

Deterring bears from areas of human activity also minimizes the chances of negative human-bear interactions. To meet this goal, the USAF incinerates all food waste and installs fences under buildings on stilts to reduce access to areas that might be attractive denning sites. The USAF has adopted the recommendations of the Polar Bear Interaction Management Plan, a plan that was developed in cooperation with the Service. The USAF uses the Polar Bear Interaction Management Plan as an educational tool to inform personnel and visitors of the appropriate behavior around bears (including deterrence methods, polar bear safety protocols, and appropriate food management). In addition, the USAF has stated that it "intends to maintain compliance with the requirements of applicable laws as well as continuing its responsibilities for stewardship of the natural resources found on lands under our control." We have also considered the current obligation of the USAF to consult with the Service on activities regardless of the designation of critical habitat in this final rule, minimal delays and costs associated with consultation relative to this polar bear critical habitat designation, and the educational benefits afforded by the designation of polar bear critical habitat in Alaska.

Conclusion

Habitat features essential to polar bear conservation are present on USAF lands, and each affected installation has an approved INRMP. Activities occurring on these installations are being conducted in a manner that provides a benefit to polar bear.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act we have determined that the USAF lands that overlap with the designated polar bear critical habitat at Point Lonely (former SRRS), Point Barrow LRRS, Oliktok LRRS, Bullen Point LRRS, and Barter Island LRRS are subject to the approved INRMPs and that conservation efforts identified in the INRMPs provide a benefit to polar bears occurring in habitats within or adjacent to these facilities. Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3) of the Act. As a result, we are not including a total of approximately 1,720 ha (4,250 ac) of habitat in these DOD installations in this final critical habitat designation because of these exemptions.

Exclusions Under Section 4(b)(2) of the Act

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, it is clear from the plain language, meaning, and context of the Act itself, as well as the legislative history, that Congress intended for the Secretary to have broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering what benefits an area may receive from being included in the critical habitat designation, we consider the additional regulatory benefits under section 7 of the Act that the area would receive from the protection against adverse modification or destruction resulting from actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, the continuation, strengthening, or encouragement of partnerships, or implementation of a management plan that provides equal or more conservation than a critical habitat designation would provide.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully evaluate the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If they do, we then determine whether exclusion of the particular area would

result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, then it will not be excluded from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation. We considered the areas discussed below for exclusion under section 4(b)(2) of the Act, and present our detailed analysis below. For those areas in which the Secretary has exerted his discretion to exclude, we believe that:

(1) Their value for conservation of the polar bear and its habitat will be preserved for the foreseeable future by existing protective actions, or

(2) The benefits of excluding the particular area outweigh the benefits of including it, based on a consideration of the "other relevant impact" provision of section 4(b)(2) of the Act, and the area's exclusion would not result in the extinction of polar bear.

A total of 5,698 ha (14,080 ac) of terrestrial coastal denning habitat (less than one percent of the area proposed as critical habitat) have been excluded from designation as critical habitat. No Sea-ice Habitat or Barrier Island Habitat was excluded. Maps showing excluded Terrestrial Denning Habitats are available upon request by contacting the Marine Mammals Management Office; *see* the **ADDRESSES** section.

In the following sections, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act. In addition, we conducted an economic analysis of the impacts of the proposed critical habitat designation and related factors, which we made available for public review and comment on May 5, 2010 (75 FR 24545). Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

Benefits of Inclusion

Educational Benefits

The identification of those areas that contain the features essential to the conservation of the species, or are areas that are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. Designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Because the critical habitat process includes multiple public comment periods, opportunities for public hearings, and announcements through local venues, including radio and other news sources, the designation of critical habitat provides numerous occasions for public education and involvement. Through these outreach opportunities, landowners, State agencies, and local governments can become more aware of the plight of listed species and conservation actions needed to aid in species recovery. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high value for polar bears in Alaska, and may assist land owners and managers in developing conservation management plans for identified areas, as well as for any other identified occupied habitat or suitable habitat that may not be included in the areas the Service identifies as meeting the definition of critical habitat. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Regulatory Benefit

The regulatory benefits of critical habitat designation are found in section 7(a)(2) of the Act. As discussed above, section 7 requires Federal agencies to ensure that any "actions" within the meaning of the regulations (50 CFR 402.02) that the agency authorizes, funds, or carries out are not likely to destroy or adversely modify designated critical habitat. To that end, Federal agencies must consult with the Service on actions that may affect critical habitat. In addition, Federal agencies must consult with the Service on actions that may affect a listed species and the agency must refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the potential difference in outcomes of these two analyses represents the regulatory benefit of critical habitat designation. For some species, and in some locations, the outcome of these analyses will be similar, because effects to critical habitat often also will result in effects to the species. However, the regulatory standards are different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, whereas the destruction or adverse modification analysis investigates the action's effects to the designated critical habitat's contribution to conservation. This could, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may in some cases provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat designation. First, consultation for potential impacts to critical habitat is required only where there is a Federal nexus (*i.e.,* an action authorized, funded, or carried out by any Federal agency). If there is no Federal nexus, then the critical habitat designation of private lands, by itself, does not restrict actions by private parties that may destroy or adversely modify critical habitat, as long as the habitat modification or degradation does not actually kill or injure a listed wildlife species. Because the Act defines "take" as meaning to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct" (16 U.S.C. 1532(19)), and the regulations define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering" 50 CFR 17.3), habitat modification or degradation on private lands that actually kills or injures a listed wildlife species is prohibited under the Act.

Second, the designation only limits destruction or adverse modification of that habitat. By its nature, the prohibition on adverse modification of critical habitat is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species, or of unoccupied areas that are essential for the conservation of the species, are not appreciably reduced. Critical habitat designation alone does not require specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the species or critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological

opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of designated critical habitat.

A biological opinion that concludes in a determination of no destruction or adverse modification of critical habitat may recommend additional conservation measures to minimize adverse effects to the PCEs, but such measures would be discretionary on the part of the Federal agency. A biological opinion that concludes in a determination of no destruction or adverse modification would not include the implementation of any reasonable and prudent alternatives, as these are provided for the proposed Federal action only when our biological opinion results in a destruction or adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation is initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or destruction or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat, therefore implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through HCPs and other habitat management plans. The conservation achieved through such plans typically is greater than what we would achieve through site-by-site or project-by-project section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to preventing destruction or adverse modification caused by a particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed action. Thus the implementation of an HCP or a voluntary conservation or management plan that incorporates enhancement or recovery as the management standard often may provide much more benefit than a consultation for critical habitat designation.

Economic Analysis

In compliance with section 4(b)(2) of the Act, we conducted an economic analysis to estimate the potential economic effect of the designation. The DEA was made available for public review and comment from May 5, 2010, to July 6, 2010 (75 FR 24545). Substantive comments and information received on the DEA are summarized above in the Summary of Comments and Recommendations section and are incorporated into the final analysis, as appropriate. Taking the public comments and any relevant new information into consideration, the Service completed a final economic analysis (FEA) (dated October 14, 2010).

The primary purpose of the FEA is to identify and analyze the potential economic impacts associated with the designation of critical habitat for the polar bear in the United States. The information is intended to assist the Secretary of the U.S. Department of the Interior (DOI) in determining whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). It also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The economic analysis measures any lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed the polar bear as threatened (May 15, 2008, 73 FR 28212), and considers those costs that may occur in the years following the designation of critical habitat, with the timeframes for this analysis varying by activity.

The economic analysis focuses on the direct and indirect costs of the critical habitat designation. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis examines activities taking place both within and adjacent to the critical habitat designation. It estimates impacts based on activities that are "reasonably foreseeable" including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases its estimates on activities that are likely to occur within a 30-year timeframe, from when the proposed rule became available to the public (74 FR 56058, October 29, 2009). The 30-year timeframe was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

The primary potential incremental economic impacts attributed to the critical habitat designation are expected to be related to oil and gas exploration, development, and production (low-end scenario 29 percent; high-end scenario 60 percent); construction and development activities (low-end scenario 63 percent; high-end scenario 35 percent); and consultations associated with the U.S. Coast Guard and USAF (8.4 percent). The economic impacts of critical habitat designation on commercial shipping and marine transportation are highly speculative and so were not estimated. However, the impact of these activities on polar bear critical habitat was expected to be limited because polar bears occur on the sea ice in the winter and the marine shipping and transportation occurs primarily during the summer, and because oil spill planning and response already is considered under the Oil Pollution Act of 1990. The FEA estimates total potential incremental economic impacts in the areas proposed

as critical habitat over the next 30 years to range from $677,000 ($54,500 annualized) to $1,210,000 ($97,500 annualized) in present value terms using a 7 percent discount rate. While oil and gas activities are the most prevalent economic activities in the region, fewer consultations are forecast to occur for oil and gas activities than for other construction and development projects. This is because oil and gas activities are managed according to area-specific plans and regulations (such as the ITRs). Thus, a single consultation occurs for review of a plan or program covering multiple projects. Although administrative costs of programmatic consultations for oil and gas activities are expected to be greater than consultations for other types of activities, the greater number of forecast consultations for other activities results in greater associated impacts in the low-end scenario. In the high-end scenario, the analysis assumes a third-party administrative cost of $37,500 per formal or programmatic consultation. This cost estimate relies on information provided by stakeholders and reflects the complex nature of consultations for oil and gas projects in Alaska. According to the high-end scenario, oil and gas activities experience the greatest incremental impacts of the designation.

Approximately 41 to 70 percent, depending on the scenario, of the forecasted incremental impacts occur in Units 2 and 3, in spite of the fact that Units 2 and 3 account for only about 5 percent of the total area designated as critical habitat. Forecasted activities for the sea ice habitat (Unit 1) generally are covered by large-scale plans and regulations (e.g., ITRs) and therefore are subject to less frequent consultation.

We have considered and evaluated the potential economic impact of the critical habitat designation under 4(b)(2) of the Act, as identified in the FEA. Based on this evaluation, we believe the economic impacts associated with the designation here are neither significant nor will result in a disproportionate effect due to the manner in which polar bear conservation measures have been or are are expected to be through the MMPA and Act. The final economic analysis is available at *http://www.regulations.gov* or upon request from the Marine Mammals Management Office (*see* **ADDRESSES**).

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are impacts to national security that may exist from the designation of critical habitat. Section 4(b)(2) allows the Secretary to exclude areas from critical habitat for reasons of national security if the Secretary determines the benefits of such an exclusion exceed the benefits of designating the area as critical habitat. However, this conclusion cannot occur if it will result in the extinction of the species concerned.

The USAF request for exclusion of the DOD lands for Active and Inactive Radar Sites in Alaska was based in part on the critical role of these sites as part of the Alaska Radar System in support of the Alaska NORAD Region and Homeland Defense to detect, track, report, and respond to potentially hostile aircraft approaching our borders and entering our airspace. Only one Inactive Radar Site, Point Lonely (former SRRS), and four Active Radar Sites, Point Barrow LRRS, Oliktok LRRS, Bullen Point LRRS, and Barter Island LRRS, overlap with the polar bear critical habitat designation. The Secretary has exempted these five Radar Sites from the polar bear critical habitat designation under section 4(a)(3) of the Act (*see Application of Section 4(a)(3) of the Act* above), and there are no additional DOD lands operated by the USAF that would be considered for exclusion under 4(b)(2) of the Act.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation. There are no HCPs in Alaska for the polar bear or any other listed species; therefore, we have not excluded any lands on the basis of being part of an HCP.

Tribal Lands—Exclusions Under Section 4(b)(2) of the Act

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we coordinate with federally recognized Tribes on a government-to-government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) states that (1) critical habitat shall not be designated in areas that may impact tribal trust resources, may impact tribally-owned fee lands, or are used to exercise tribal rights unless it is determined essential to conserve a listed species; and (2) in designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands. While this Order does not apply to the State of Alaska, we recognize our responsibility to inform affected Native Corporations, and regional and local Native governments of our proposed critical habitat designation. During the open comment periods, we coordinated extensively with Native communities; sought traditional Native knowledge; and contacted numerous individuals in the rural communities. We also held public meetings that were attended by Alaska Natives. In addition, in 2001, the DOI issued a "Policy on Government-to-Government Relations with Alaska Native Tribes" to clarify Secretarial Order 3206 in relation to the consultative process for Alaska Natives.

Habitat on Alaska Native-owned lands was determined to be essential to the conservation of polar bears due to its location within the matrix of habitat available for the species. Alaska Native lands overlap primarily with the Barrier Island Habitat (18 percent) and the Terrestrial Denning Habitat (6 percent). The coastal barrier islands provide areas free from disturbance for resting, denning, and access to maternal den sites or optimal feeding areas. Polar bears frequently use the coastal bluffs and river bluffs for denning and move along the coast to search for maternal den sites and preferred feeding areas.

Through the Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 (Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)), Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with

Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Indian culture, and to make information available to Tribes.

We contacted all Alaska Native communities potentially affected by the proposed designation and met with the Alaska Nanuuq (polar bear) Commission and the North Slope Borough to discuss their ongoing or future management strategies for polar bear. We subsequently received comments describing ongoing tribal management concerns, and plans and conservation efforts with respect to polar bears. Barrow and Kaktovik are the only two Alaska Native communities that overlap with the proposed critical habitat designation.

(1) Benefits of Inclusion

The primary effect of designating critical habitat is the requirement for Federal agencies and any projects with a Federal nexus to consult with the Service under section 7 of the Act to ensure that actions they authorize, fund, or carry out do not destroy or adversely modify designated critical habitat. A discussion of these regulatory benefits was presented earlier. Additionally, the designation of critical habitat may provide educational benefits by informing land managers of areas that are essential to polar bears.

Educational Benefits

The identification of those areas that contain the features essential to the conservation of the species, or are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. Designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Because the critical habitat process includes multiple public comment periods, opportunities for public hearings, and announcements through local venues, including radio and other news sources, the designation of critical habitat provides numerous occasions for public education and involvement. Through these outreach opportunities, land owners, State agencies, and local governments can become more aware of the plight of listed species and conservation actions needed to aid in species recovery. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high value for polar bears in Alaska, and may assist land owners and managers in developing conservation management plans for identified areas, as well as for any other identified occupied habitat or suitable habitat that may not be included in the areas the Service identifies as meeting the definition of critical habitat. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

(2) Benefits of Exclusion

For the past 30 years or more, the Service has been working actively with the North Slope Borough and Alaska Native communities on issues that deal with subsistence use and polar bear conservation. Examples include:

- The Native to Native Inuvialuit (Canada)/Inupiat (Alaska) Agreement (I/I Agreement) for management and conservation of the southern Beaufort Sea population;
- Establishment of the Alaska Nanuuq (polar bear) Commission under the MMPA, which represents Alaska Native interests on issues concerning subsistence use and polar bear conservation;
- Development of the U.S.-Russia Bilateral Agreement for the Conservation of the Chukotkan Alaska Polar Bear Population, which includes Native and Government representatives from both countries;
- Development of bear-human interaction plans for the North Slope Borough communities;
- Development of polar bear viewing guidelines for Kaktovik; and
- Development of polar bear deterrence guidelines and training.

In addition, Native communities, which consist of relatively dense core areas of human habitation in remote locations along the northern and western coasts of Alaska, generally do not have the necessary PCEs for polar bear denning, resting, and feeding. Children and adults can be active during all the daylight hours in the summer and during the periods of complete darkness in the winter. Polar bears are actively deterred from the Native communities for both human and bear safety. Typically polar bears that remain too long in these communities are killed because of concerns for human safety. To minimize negative bear-human interactions and intentional or unintentional disturbance by humans, polar bears are actively deterred from denning in or near the Native coastal communities. Polar bear interaction plans, deterrence programs, safety guidelines, and outreach continue to be developed in cooperation with the Native communities.

The continued cooperation with the Native communities in northern and western Alaska is essential for the conservation of polar bears in Alaska. Excluding the Native-owned lands for these two villages will enhance the partnership efforts which have taken many years to develop between the Federal government and the Native communities.

(3) Determination of Whether Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for polar bears on the Native-owned town sites of Barrow and Kaktovik are small compared to the benefits of exclusion. The conservation measures being implemented by these Native communities and organizations working on behalf of these Native communities provide greater benefit to polar bears and their habitat than would designating critical habitat in these communities. The residents of these communities have subsisted on, and lived with polar bears for thousands of years and thus understand polar bear behavior and conservation efforts required to protect polar bears. Both the Service and these Native communities share the same goal of protecting polar bears for future generations to use and enjoy. Excluding the Native-owned lands of these two villages will enhance the partnership efforts that have taken many years to develop between the Federal Government and the Native communities. The benefit of sustaining current and future partnerships outweighs the extra outreach efforts associated with critical habitat and the additional section 7 requirements under the Act. Therefore, the Secretary has decided to exercise his discretion under the Act to exclude the Native communities of Barrow and Kaktovik, which are the two formally defined Native coastal communities that overlap with the polar bear critical habitat designation. Since the critical habitat designation for polar bear includes other Alaska Native-owned lands or trust resources that might be affected by costs associated with section 7 consultations on construction and development projects that have a Federal nexus, we will continue to cooperate with Alaska Native communities in a government-to-government relationship.

(4) Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of the Native communities of

Barrow and Kaktovik from the final designation of critical habitat for the polar bear will not result in the extinction of the species. As previously explained, the benefits of excluding 5,698 ha (14,080 ac) of land from critical habitat outweigh the benefits of inclusion. The area excluded comprises an extremely small fraction of the designation (less than one percent of the total designation and 0.38 percent of the Terrestrial Denning Habitat Unit). While some loss of habitat for the polar bear may occur, this habitat loss will not lead to extinction because the proportion of area excluded compared to the overall amount of terrestrial denning habitat is extremely small, furthermore, due to ongoing efforts to minimize polar bear/human interactions, polar bears are routinely hazed away from these villages. [need to elaborate here]\ With these facts, and the continued commitment from the villages to work with us on polar bear conservation and consult with us on projects that may adversely impact polar bears, we conclude that exclusion of these villages will not result in extinction of this species. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process provide assurances that the species will not go extinct as a result of this small exclusion.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the **Federal Register.** The Executive Order defines a rule as significant if it meets one of the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

If the rule meets criteria (1) above it is called an "economically significant" rule and additional requirements apply. It has been determined that this rule is "significant" but not "economically significant." It was submitted to OMB for review prior to promulgation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on our FEA, we provide our analysis for determining whether or not the designation of critical habitat for polar bears in Alaska will result in a significant impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors with less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation, as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the designation of critical habitat for polar bears in Alaska will affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as oil and gas exploration and development, and other construction and development activities. Specifically, we identified 112 small entities that may be affected by these activities:

- Gold ore mining (5);
- Support activities for oil and gas operations (13);
- Support activities for mining (1);
- Electric power generation (7);
- Water supply and irrigation, (3);
- Construction of buildings (29);
- Water and sewer line construction (3);
- Oil and gas pipeline and related structures construction (5);
- Highway, street, or bridge construction (3);
- Specialty trade contractors (31);
- Other airport operations (6);
- Other support activities for air transportation (1);
- Support activities for rail transportation (1);
- Support activities for road transportation (2);
- All other support activities for transportation (2).

In estimating the numbers of small entities potentially affected, we considered whether the activities of these entities may entail any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the polar bear. Federal agencies also must consult with us if their activities may affect designated critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (*see* Application of the "Adverse Modification" Standard section).

In order to determine whether it is appropriate for our agency to certify that this rule will not have a significant economic impact on a substantial number of small entities, we considered in the FEA the potential impacts resulting from implementation of conservation actions related to the designation of critical habitat for polar bears in Alaska for each of the 112 small entities discussed above. As described in Appendix A of the FEA, the potential impacts are associated with: (1) Oil and gas exploration, development, and production, and (2) construction and development activities. The average

annualized incremental impacts to small entities associated with the oil and gas exploration, development, and production ranges from $1,050 to $45,000 and for construction and development activities was $9,290, applying a 7 percent discount rate. Third parties involved in the former category are not likely to be small. Based on the past polar bear consultations regarding oil and gas activities, we expect that third party participants in consultations will be the large oil and gas companies operating in the region, such as Shell, ExxonMobil, Conoco Phillips, and British Petroleum. These companies exceed the 500-employee threshold for small crude petroleum and natural gas extraction, natural gas liquid extraction, and drilling oil and gas well businesses, as defined by the SBA. Third parties involved in the latter category, construction and development activities, are likely to be small, however. Construction and development activities include wind energy development, utility line construction, road maintenance and construction, airport and seaport development and expansion, and mining (not including oil and gas). Third parties involved in future section 7 consultations for construction and development projects therefore may include local governments, residential construction companies, heavy and civil engineering companies, specialty trade contractors, mining companies (not including oil and gas), utility companies, developers, and transportation companies. Exhibit A–1 of the DEA highlights that about 85 percent of these industry businesses in the proposed critical habitat region are small. It therefore is likely that small entities will bear the estimated annualized incremental administrative costs of consultation of $9,290. To put this number into context, the average value of construction work in Alaska is about $1.9 million per construction business (2002 U.S. Census Summary Statistics for NAICS 23 (Construction) in Alaska, accessed at *http://www.census.gov/econ/census02/data/ak/AK000.HTM*). Importantly, this estimate includes all construction businesses across the State, inclusive of but not limited to small businesses in the North Slope. These data are not available at the borough level. The annualized impacts estimated in the economic analysis represent about 0.5 percent of the per business value of construction in the State of Alaska. We therefore conclude that costs to small entities are not anticipated to be significant. Please refer to the FEA for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the designation will result in a significant economic impact on a substantial number of small entities. We have identified 112 small entities that may be impacted by the critical habitat designation. For the above reasons and based on currently available information, we certify that the designation will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The vast majority (99 percent) of the critical habitat designation falls within Federal or State of Alaska jurisdiction. The State of Alaska does not fit the definition of "small governmental jurisdiction." Waters adjacent to Native-owned lands are still owned and managed by the State of Alaska. In most cases, development around Native villages, or in the North Slope Borough, occurs with funding from Federal or State sources (or both). Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the polar bear in the United States in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the polar bear in the United States does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Alaska and Tribal governments. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat essential for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule identifies the essential features within the designated areas to assist the public in understanding the habitat needs of the polar bear in the United States, and defines the specific geographic areas designated as critical habitat for the polar bear in the United States.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 (Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)), Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaskan Native culture, and to make information available to Tribes.

Since 1997, the Service has worked closely with the Alaska Nanuuq Commission (Commission) on polar bear management and conservation for subsistence purposes. The Commission, established in 1994, is a Tribally Authorized Organization created to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal Government on the conservation of polar bears in Alaska. Not only was the Commission kept fully informed throughout the rulemaking process for the listing of the polar bear as a threatened species, but that organization was asked to serve as a peer reviewer of the proposed critical habitat designation. Following publication of the proposed critical habitat rule, the Service actively solicited comments from Alaska Natives living within the range of the polar bear. We held a public hearing in Barrow, Alaska, to enable Alaska Natives to provide oral comment. We invited the 15 villages in the Commission to participate in the hearing, and we offered the opportunity to provide oral comment via teleconference.

For the critical habitat areas that occur within sea-ice Unit (Unit 1), we have determined that there are no Alaska Native-owned lands occupied at the time of listing that contain the features essential for the conservation, and no Alaska Native-owned lands essential for the conservation of polar bears in the United States. With regard to the areas of proposed designation of critical habitat on Alaska Native-owned lands in Alaska, we reported to the Alaska Nanuuq Commission in August 2009 on the process of evaluating critical habitat for polar bears in Alaska. During this meeting, we explained what critical habitat is and that, if designated, special management considerations may be needed for the features determined to be essential to the species. We noted our appreciation of their past participation and comments in our evaluation through the listing determination, and noted our intention to hold public hearings in Barrow and Anchorage, Alaska, in conjunction with any proposed designation. Following the release of the proposed critical habitat designation on October 29, 2009 (74 FR 56058), we attempted to notify all potentially affected Native communities and local and regional governments, and we requested comments on the proposed rule. In response to a specific request by the North Slope Borough, we presented information on the polar bear critical habitat on March 1, 2010, in Barrow, Alaska. At that meeting, attendees were given the opportunity to comment on the proposal. As noted earlier, we published notices in the **Federal Register** on May 5, 2010 (75 FR 24545), announcing the proposed designation of critical habitat, the availability of the draft economic analysis, and another 60-day comment period. We also notified the primary communities located within the range of

polar bear in Alaska by mail of the opportunity to provide oral or written comments prior to public hearings we held in Anchorage on June 15, 2010, and Barrow on June 17, 2010. In addition, the Alaska Nanuuq Commission, which represents Alaska Native interests concerning the conservation and subsistence use of polar bears, assisted in notifying the villages about the proposed critical habitat designation through their village representatives. We responded to all requests for additional information from various organizations and communities before and after submitting the proposed rule to designate critical habitat to the **Federal Register** on October 29, 2009. Additionally, we do not anticipate that this final designation of critical habitat will have an effect on Alaska Native activities especially as they may pertain to subsistence activities.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this critical habitat designation to significantly affect energy supply, distribution, or use.

Oil and gas activities have been conducted in the Beaufort and Chukchi Seas since the late 1960s. A majority of the oil and gas development has occurred on land adjacent to the Beaufort Sea, although offshore development is expanding. In February 2008, 1,116,315 ha (2,758,377 ac) located offshore of Alaska from Point Barrow to northwest of Cape Lisburne were leased as part of Chukchi Sea Lease Sale 193. This lease sale area starts approximately 40–80 km (25–50 mi) from shore and extends out to 321 km (200 mi) offshore. In addition, in September 2009, the Service completed a biological opinion on the MMS' proposed lease sales and associated seismic surveys and exploratory drilling in the Beaufort and Chukchi Seas program area. Exploration and development are projected to occur in the Beaufort Sea and Chukchi Sea Program Areas, which are a subset of the larger Beaufort and Chukchi Seas Planning Areas. The Beaufort Sea Program Area includes approximately 13.4 million ha (33.2 million ac) of the Beaufort Sea from Barrow east to the United States-Canada border. The Chukchi Sea Program Area covers approximately 16.3 million ha (40.2 million ac) of the Chukchi Sea from the United States-Russia Maritime border west of Point Hope to the edge of the Beaufort Sea Program Area at Barrow. Most of the onshore and offshore areas currently associated with active or proposed oil and gas activities overlap with the critical habitat areas. Any proposed development project likely would have to undergo section 7 consultations to ensure that the actions are not likely to destroy or adversely modify designated critical habitat. Consultations may result in modifications to the project to minimize the potential adverse effects to polar bear critical habitat.

The Service has been working with the oil and gas industry for many years in order to accommodate both project and species' needs under the authorities of the MMPA. For example, more restrictive provisions associated with incidental take regulations under the MMPA (see our detailed discussion under Special Management Considerations or Protection), have been developed for both the Chukchi and Beaufort Seas and provide a framework to minimize any adverse bear-human interactions associated with the oil and gas industry. We do not believe that the critical habitat designation will provide any new and significant effects on energy supply, distribution, or use. Although the future will have many challenges, we expect to be able to work cooperatively with oil and gas operators to minimize any adverse anthropogenic effects to polar bears and their habitat. Therefore, we do not believe this action is a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available at *http://regulations.gov,* or upon request from the Field Supervisor, Marine Mammals Management Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff members of the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for "Bear, polar" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS.							
*	*	*	*	*	*		*
Bear, polar	*Ursus maritimus*	U.S.A. (AK), Canada, Russia, Denmark (Greenland), Norway.	Entire	T	781	17.95(a)	17.40(q)
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (a) by adding an entry for "Polar Bear (*Ursus maritimus*) in the United States" in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Polar Bear (*Ursus maritimus*) in the United States

(1) Critical habitat areas are in the State of Alaska, and adjacent territorial and U.S. waters, as described below.

(2) The primary constituent elements of critical habitat for the polar bear in the United States are:

(i) Sea-ice habitat used for feeding, breeding, denning, and movements, which is sea ice over waters 300 m (984.2 ft) or less in depth that occurs over the continental shelf with adequate prey resources (primarily ringed and bearded seals) to support polar bears.

(ii) Terrestrial denning habitat, which includes topographic features, such as coastal bluffs and river banks, with the following suitable macrohabitat characteristics:

(A) Steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope;

(B) Unobstructed, undisturbed access between den sites and the coast;

(C) Sea ice in proximity to terrestrial denning habitat prior to the onset of denning during the fall to provide access to terrestrial den sites; and

(D) The absence of disturbance from humans and human activities that might attract other polar bears.

(iii) Barrier island habitat used for denning, refuge from human disturbance, and movements along the coast to access maternal den and optimal feeding habitat, which includes all barrier islands along the Alaska coast and their associated spits, within the range of the polar bear in the United States, and the water, ice, and terrestrial habitat within 1.6 km (1 mi) of these islands (no-disturbance zone).

(3) Critical habitat does not include manmade structures (*e.g.,* houses, gravel roads, generator plants, sewage treatment plants, hotels, docks, seawalls, pipelines) and the land on which they are located existing within the boundaries of designated critical habitat on the effective date of this rule.

(4) *Critical habitat map units.* Boundaries were derived from GIS data layers of the 1:63,360 scale digital coastline of the State of Alaska, created by the Alaska Department of Natural Resources from U.S. Geological Survey inch-to-the-mile topographic quadrangles. The International Bathymetric Chart of the Arctic Ocean, version 2.3, was used for the bathymetric data. The maritime boundaries to generate the 3-mile nautical line, U.S. territorial boundary, and Exclusive Economic Zone were from the National Oceanic and Atmospheric Administration's Office of Coast Survey Web site. The land status and ownership information at the section level scale was from the Alaska Department of Natural Resources, and was obtained from the Alaska State Office of the Bureau of Land Management. The detailed parcel-level land status was created by the U.S. Fish and Wildlife Service, Division of the Realty, by digitizing U.S. Bureau of Land Management Master Title Plots. The detailed denning habitat maps and the internal boundaries for the terrestrial denning habitat were provided by the U.S. Geological Survey, Alaska Science Center. The data were projected into Alaska Standard Albers Conical Equal Area using the North American Datum of 1983 to estimate the area of each critical habitat unit and determine overlap with land and water ownership.

(5) Unit 1: Sea-ice habitat.

(i) The critical sea-ice habitat area includes all the contiguous waters from the mean high tide line of the mainland coast of Alaska to the 300-m (984.2-ft) bathymetry contour. The critical sea-ice habitat is bounded on the east by the United States-Canada border (69.64892°N, 141.00533°W) and extends along the coastline to a point southwest of Hooper Bay (61.52859°N, 166.15476°W) on the western coast of Alaska. The eastern boundary extends offshore approximately 85 km (136 mi) from the coast (70.41526°N, 141.0076°W) at the United States-Canada border and then follows the 300-m (984.2-ft) bathymetry contour northwest until it intersects with the U.S. 200-nautical-mile EEZ (74.01403°N, 163.52341°W). The boundary then follows the EEZ boundary southwest to the intersection with the United States-Russian boundary (72.78333°N, 168.97694°W). From this point, the boundary follows the United States-Russia boundary south and southwest to the intersection with the southern boundary of the Chukchi-Bering Seas population southwest of Gambell, St Lawrence Island (62.55482°N, 173.68023°W). From this point, the boundary extends southeast to the coast of Alaska (61.52859°N, 166.15476°W).

(ii) The map of Unit 1, sea-ice habitat, follows:

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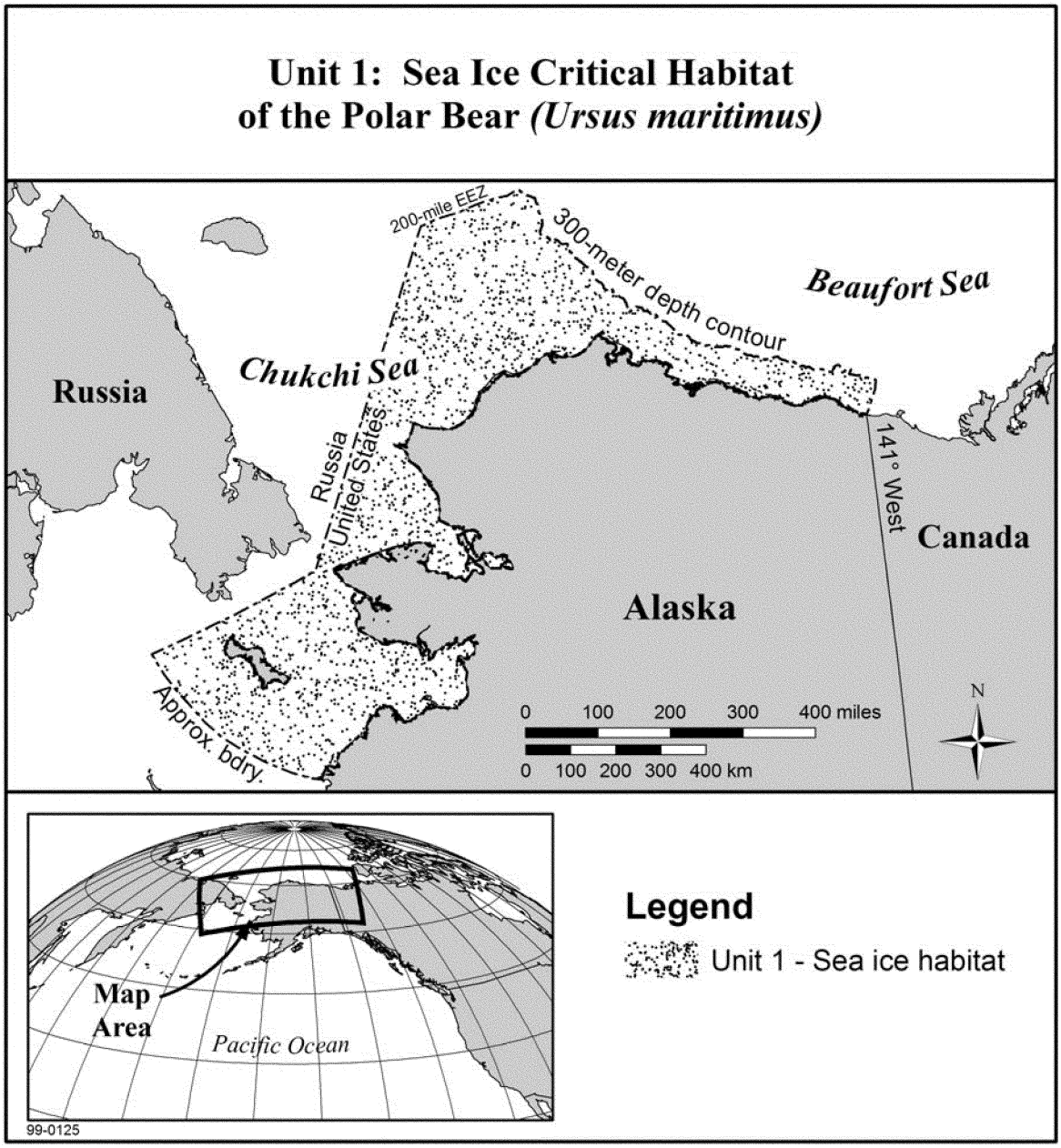


(6) Unit 2: Terrestrial denning habitat.

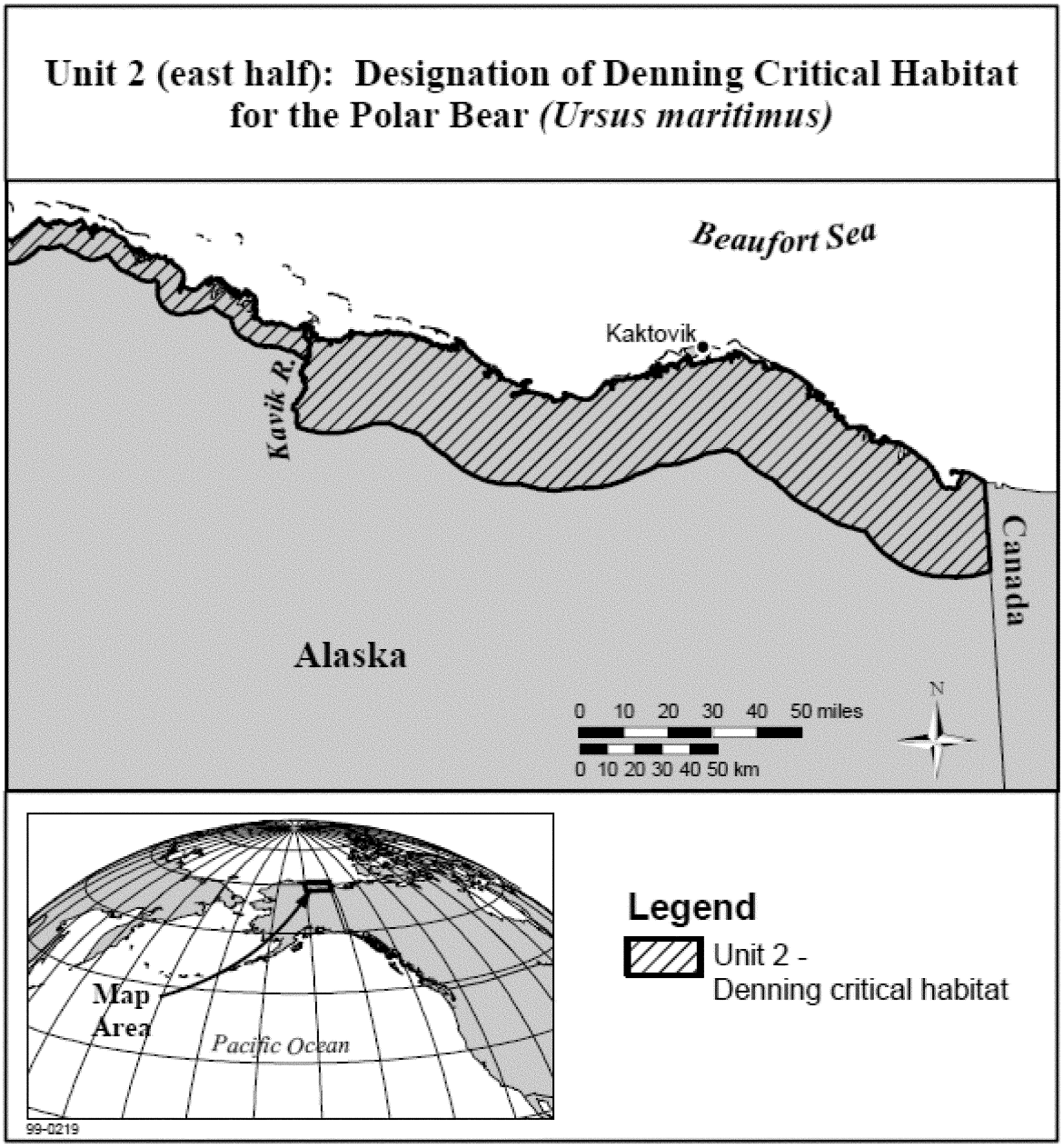
(i) The critical terrestrial denning habitat area extends from the mainland coast of Alaska 32 kilometers (20 mi) landward (primarily south) from the United States-Canada border to the Kavik River to the west. From the Kavik River to Barrow, the critical terrestrial denning habitat extends landward 8 kilometers (5 mi) south from the mainland coast of Alaska.

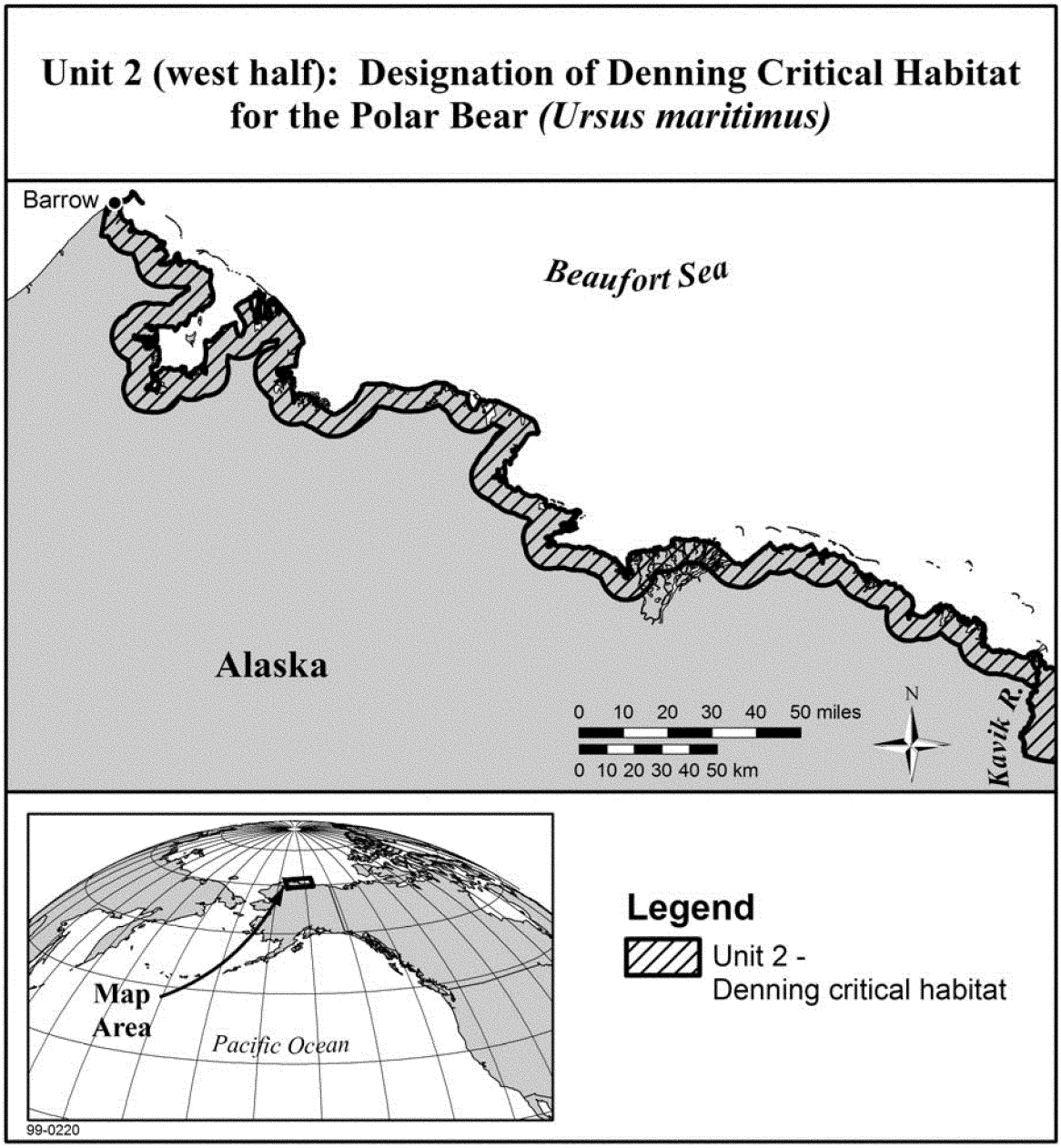
(ii) The village district of Barrow is excluded from the critical terrestrial denning habitat area. The excluded area is delineated as follows: Beginning at the southeast corner of the northeast ¼ of Section 29, Unsurveyed T22N, R18W, Umiat Meridian, Alaska; thence North to the southeast corner of the northeast ¼ of Section 17, Unsurveyed T22N, R18W; thence East to the southeast corner of the northeast ¼ of Section 16, Unsurveyed T22N, R18W, Umiat Meridian, Alaska; thence North to the northeast corner of Section 16, Unsurveyed T22N, R18W; thence East to the southeast corner of southwest ¼ of Section 10, Unsurveyed T22N, R18W; thence North to the northwest corner of the southwest ¼ of northeast ¼ of Section 34, Unsurveyed T23N, R18W; thence East to the southeast corner of the northeast ¼ of the northeast ¼ of Section 34, Unsurveyed T23N, R18W; thence North to the point where the section line common to Sections 14 and 15, Unsurveyed T23N, R18W; intersects the mean low water line of the Chukchi Sea; thence in a southwesterly direction along the mean low water line of the Chukchi Sea to the point where the mean low water line of the Chukchi Sea intersects the east-west center line of Section 27, Unsurveyed T22N, R19W; thence East to the point of beginning, containing 21 square miles, more or less. You can view legal descriptions and detailed, colored maps of the exclusions in this final rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm.*

(iii) The village district of Kaktovik is excluded from the critical terrestrial denning habitat area. The excluded area is delineated as follows: From the P.O.B. (which is also the point of beginning for the U.S. Survey No. 4234) at

approximately 2,828 feet distant on a bearing of N 01° 40′ E from Tri. Sta. U. S. C. and G. S. "Barter Astro"; the boundary thence shall run West for approximately 325′; thence South approximately 600′; thence West approximately 500′; thence South approximately 100′; thence West approximately 4,000′; thence South approximately 3,550′; thence East approximately 4,000′; thence in a northeasterly direction approximately 3,225′ to a point on the mean high water line of the Kaktovik Lagoon which is approximately 2,478′ distant on a bearing S 78°53′ E from Tri. Sta. U. S. C. and G. S. "Barter Astro"; thence northerly along the meandering mean high water line of the Kaktovik Lagoon, around Pipsuk Point, and westerly continuing on the meandering mean high water line to a point on the mean high water line of the Kaktovik Lagoon which is approximately 477′ distant on a bearing of N 88°58′ E from another point which is approximately 1,503′ distant on a bearing of N 01°24′ W from the point of beginning; thence approximately 477′ in a westerly direction, a bearing of S 88°; 58′ W; thence approximately 1,503′ in a southerly direction on a bearing of S 01° 24′ E to the point of beginning, containing one square mile, more or less. You can view legal descriptions and detailed, colored maps of the exclusions in this final rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm.*

(iv) The maps of Unit 2 (east and west), terrestrial denning habitat, follow:

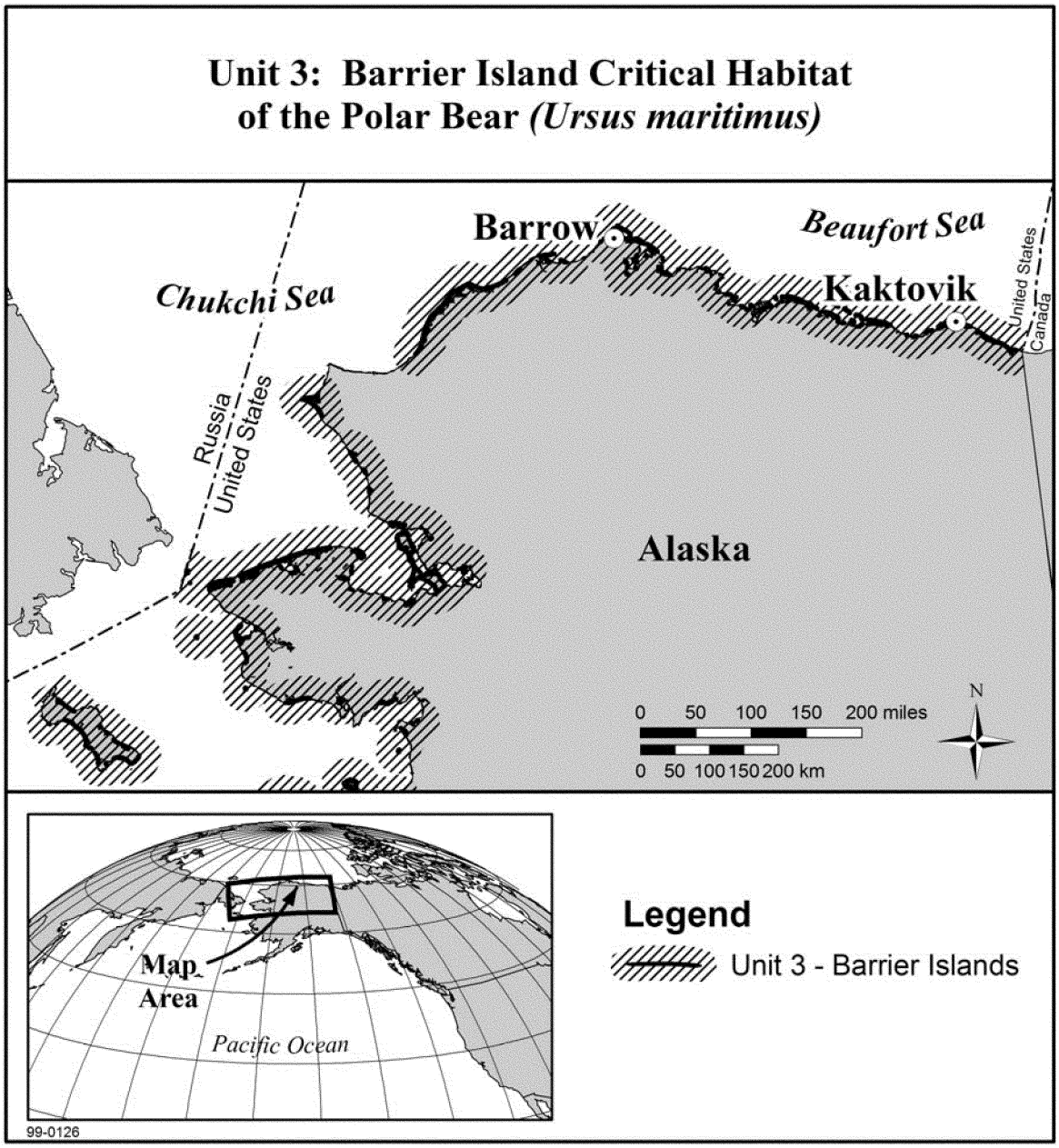




(7) Unit 3: Barrier island habitat.

(i) The critical barrier island habitat includes off-shore islands offset from the mainland coast of Alaska starting at the United States-Canada border westward to Barrow, southwest to Cape Lisburne, south to Point Hope, southwest to Wales, southeast to Nome, and ending at Hooper Bay, AK, and water, sea ice, and land habitat within 1.6 kilometers (1 mile) of the barrier islands (no-disturbance zone).

(ii) The map of Unit 3, barrier island habitat, follows:



* * * * *

Dated: October 25, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–29925 Filed 12–6–10; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
December 7, 2010

Part III

Commodity Futures Trading Commission

17 CFR Part 43

Real-Time Public Reporting of Swap Transaction Data; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Real-Time Public Reporting of Swap Transaction Data

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Specifically, in accordance with Section 727 of the Dodd-Frank Act, the Commission is proposing rules to implement a new framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Additionally, the Commission is proposing rules to address the appropriate minimum size and time delay relating to block trades on swaps and large notional swap transactions.

DATES: Comments must be received by February 7, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD08, by any of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Internet Web site, via Its Comments Online Process: http://comments.cftc.gov*. Follow the instructions for submitting comments through the Internet 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received on *http://www.cftc.gov*. You should submit only information that you wish to make publicly available. 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 established procedures in Commission Regulation § 145.9.[1]

The Commission reserves the right, but shall not have the 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 from the Commission's Internet Web site, but that contain comments on the merits of the rulemaking, will be retained in the public comment file and will be considered as required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* and other applicable laws, and may be accessible under the Freedom of Information Act, 5 U.S.C. 552.

FOR FURTHER INFORMATION CONTACT: Thomas Leahy, Associate Director, Division of Market Oversight, 202–418–5278, *tleahy@cftc.gov;* or Jeffrey L. Steiner, Special Counsel, Division of Market Oversight, 202–418–5482, *jsteiner@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA")[4] to establish a comprehensive, new regulatory framework for swaps and security-based swaps.[5] The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, among other things: (1) Providing for the

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] Rules governing the reporting and dissemination of security-based swaps are the subject of a separate and forthcoming rulemaking by the Securities and Exchange Commission ("SEC").

registration and comprehensive regulation of swap dealers and major swap participants ("MSPs"); (2) imposing mandatory clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commodity Futures Trading Commission's ("Commission" or "CFTC") rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Accordingly, in order to ensure the proper implementation of the new regulatory framework, Section 727 of the Dodd-Frank Act created Section 2(a)(13) of the CEA, which requires the Commission to promulgate rules that provide for the public availability of swap transaction and pricing data in real-time in such form and at such times as the Commission determines appropriate to enhance price discovery.[6] Under new Section 2(a)(13)(A) of the CEA, the definition of "real-time public reporting" means reporting "data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed."

Sections 2(a)(13)(C)(i) through (iv) of the CEA set out the four types of swaps for which transaction and pricing data must be reported to the public in real-time: (i) Swaps that are subject to the mandatory clearing requirement[7] (including those swaps that may qualify for a non-financial end-user exception from the mandatory clearing requirement);[8] (ii) swaps that are not subject to the mandatory clearing requirement but are cleared at a registered derivatives clearing organization ("DCO"); (iii) swaps that are not cleared at a registered DCO and which are reported to a registered swap data repository ("SDR") or to the Commission pursuant to Section 2(h)(6) of the CEA; and (iv) swaps that are "determined to be required to be cleared" under Section 2(h)(2) of the CEA but are not cleared. The four categories described in Section 2(a)(13)(C) of the CEA cover all swaps and, therefore, the real-time reporting requirements apply to all swaps, including those swaps executed on a registered swap execution facility ("SEF") or a registered designated contract market ("DCM," together with a SEF, a "swap market") and those swaps executed bilaterally between counterparties and not pursuant to the rules of a SEF or DCM ("off-facility swaps").[9]

With regard to swaps described in Sections 2(a)(13)(C)(i) and (ii) of the CEA, Section 2(a)(13)(E) of the CEA provides that the Commission shall prescribe rules that: (i) Ensure such information does not identify the participants; (ii) specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts; (iii) specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and (iv) take into account whether public disclosure will materially reduce market liquidity. CEA Section 2(a)(13)(E) does not state explicitly that the proposed rules must contain similar provisions for those swaps described in Sections 2(a)(13)(C)(iii) and (iv). However, in applying its authority under Section 2(a)(13)(B) to "make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery," the Commission is authorized to prescribe similar rules to those provisions in Section 2(a)(13)(E) for off-facility swap transactions described in Sections 2(a)(13)(C)(iii) and (iv).[10]

II. Explanation of the Proposed Rules

A. Overview

1. Introduction

The Commission proposes to create a new part 43 of its regulations, implementing the provisions of Section 2(a)(13) of the CEA. The proposed rules in part 43 set out: (1) The entities or persons that shall be responsible for reporting swap transaction and pricing data; (2) the entities or persons that shall be responsible for publicly disseminating such data; (3) the data fields and guidance on the appropriate order and format for data to be reported to the public in real-time; (4) the appropriate minimum size and time delay for block trades and large notional swaps; and (5) the proposed effective date and implementation schedule for the proposed rules.

The proposed rules reflect consultation with staff of the Securities and Exchange Commission (the "SEC")[11] and staff of the Board of Governors of the Federal Reserve.[12] Staff from each of these agencies has provided verbal and/or written comments and the proposed rules incorporate elements of the comments provided. The proposed rules have been further informed by (i) the joint roundtable conducted by CFTC staff and staff of the SEC on September 14, 2010 (the "Roundtable");[13] (ii) public comments posted on the Commission's Internet Web site;[14] and (iii) CFTC staff meetings with market participants.[15]

The SEC is adopting rules related to the real-time reporting of security based swaps as required under Section 763 of the Dodd-Frank Act. Understanding that the Commission and the SEC regulate different products and markets and, as such may be proposing alternative regulatory requirements, the Commission requests comments on the impact of any differences between the Commission's and the SEC's approach to the regulation and reporting of swaps and security-based swaps and the public dissemination of swap transaction and

[6] Section 2(a)(13)(B) of the CEA states that "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery."

It is notable that the CEA is silent as to the appropriate method through which real-time public reporting must occur.

[7] The mandatory clearing requirement is found in Section 2(h)(1) of the CEA, as added by Section 723(a)(3) of the Dodd-Frank Act.

[8] Section 2(h)(7) of the CEA provides the non-financial end-user exception from the mandatory clearing requirement.

[9] The legislative history of the Dodd-Frank Act also suggests that the real-time reporting requirements of Section 2(a)(13) apply to all swaps. Senate Agriculture Committee Chairwoman Blanche Lincoln stated during Senate deliberations that "[t]he major components of the derivatives title include: 100 percent reporting of swaps and security-based swaps, mandatory trading and clearing of standardized swaps and security-based swaps and real-time price reporting for all swap transactions—those subject to mandatory trading and clearing as well as those subject to the end-user clearing exemption and customized swaps." 156 Cong. Rec. S5,920 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[10] In addition, the Commission is required by Section 2(a)(13)(C)(iii) of the CEA to prescribe real-time public reporting requirements for off-facility swaps "in a manner that does not disclose the business transactions and market positions of any person."

[11] Section 763 of the Dodd-Frank Act authorizes the SEC to promulgate rules "to provide for the public availability of security-based swap transaction, volume, and pricing data * * *."

[12] *See* Section 712(a)(1) of the Dodd-Frank Act requires staff to consult with the SEC and other prudential regulators.

[13] The transcript from the Roundtable (the "Roundtable Tr.) is available at: *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf.*

[14] Such comments are available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_18_RealTimeReporting.html.*

[15] A list and description of such meetings is available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

pricing data in real-time. In addition, the Commission requests specific comment on the following issues:

- Would the regulatory approach of the Commission in this proposed rulemaking, pursuant to Section 727 of the Dodd-Frank Act, and the SEC's proposed rulemaking, pursuant to Section 763 and 766 of the Dodd-Frank Act, result in duplicative or inconsistent requirements on the part of market participants to both regulatory regimes or result in gaps between those regimes? If so, in what way should these duplications, inconsistencies or gaps be minimized?
- Do commenters believe that the proposed approaches by the Commission and the SEC for the real-time reporting and public dissemination of swap transaction and pricing data are comparable? If not, why? Are there approaches that could make the real-time reporting and public dissemination of swap transaction and pricing data more comparable? If so, what?
- Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the SEC that differs from the Commission's proposal? If so, which one(s)? The Commission requests that commenters provide data, to the extent possible, to support any suggested approaches.

2. Parties Responsible for Reporting Swap Transaction and Pricing Data to a Registered Entity

Section 2(a)(13)(F) of the CEA provides that the parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity [16] in a timely manner as may be prescribed by the Commission.[17] For off-facility swaps, the Commission's proposal places the requirement to report the swap transaction and pricing data in real-time to a registered entity (*i.e.,* a registered SDR that accepts and publicly disseminates real-time swap transaction and pricing data in real-time) in a manner similar to that in which all swap transaction information for uncleared swaps would be reported to a registered SDR pursuant to Section 4r(a)(3) of the CEA.[18] With respect to swaps that are executed on a swap market, the Commission's proposal provides that if the parties to a swap execute a transaction on a swap market, then the transacting parties' reporting requirements under Section 2(a)(13)(F) of the CEA are satisfied. The Commission views the real-time swap transaction and pricing data that is sent to a real-time disseminator and the swap information that is sent to a registered SDR as two separate and distinct data streams.[19]

3. Parties Responsible for Publicly Disseminating Swap Transaction and Pricing Data in Real-Time

Section 2(a)(13)(D) of the CEA authorizes the Commission to require registered entities "to publicly disseminate the swap transaction and pricing data." With respect to all off-facility swaps, the Commission's proposal requires that reporting parties send swap transaction and pricing data to registered SDRs to publicly disseminate such data in real-time. With respect to swaps that are executed on a swap market, the Commission's proposal requires that swap markets publicly disseminate swap transaction and pricing data either through a registered SDR or a third-party service provider. Under the proposal, if a swap market sends the swap transaction and pricing data to a registered SDR, the swap market is responsible for ensuring that such data is sent in a timely manner for public dissemination. Alternatively, if a swap market sends the swap transaction and pricing data to a third-party service provider for the public dissemination of such data, the swap market does not absolve itself from or satisfy the requirement to publicly disseminate swap transaction and pricing data until such time as the third-party service provider actually disseminates such data. Indeed, under the alternative, a swap market must ensure that the third-party service provider publicly disseminates the data in the manner set forth in the proposal.[20]

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions, issues and questions highlighted in the discussion in Section B below.

4. Proposed Effective Date and Implementation Schedule

The Dodd-Frank Act requires the Commission to promulgate rules to implement these provisions by July 15, 2011.[21] Proposed part 43 is designed to provide clarity as to the real-time reporting and public dissemination requirements with respect to all swap transaction and pricing data. The Commission acknowledges that the systems for reporting and public dissemination described in proposed part 43 may take a significant amount of time and resources to implement effectively. While the Commission is fully committed to implementing Congress' directive to require real-time public reporting of all swaps and will adopt final rules by July 15, 2011, participants will need a reasonable amount of time in which to acquire or configure the necessary systems, engage

[16] Section 1a(40) of the CEA, as amended by Section 721(a) of the Dodd-Frank Act, defines "registered entity" to include SEFs, DCMs and SDRs, but does not include swap dealers and MSPs. Section 1a(40) also defines registered entity to include DCOs. The Commission has determined not to apply this requirement to DCOs because it believes that the value of timely public dissemination outweighs the benefit of waiting until a swap is presented to a clearing organization.

[17] Sections 4s(f)(1)(A) and 4s(f)(2) of the CEA, provide the Commission with broad authority to adopt rules governing the reporting of all swap transaction information for swap dealers and MSPs. Specifically, Section 4s(f)(1)(A) of the CEA provides that "[e]ach registered swap dealer and major swap participant shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant * * *" Section 4s(f)(2) of the CEA provides that "[t]he Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants." Additionally, Sections 4s(h)(1)(D) and 4s(h)(3)(D) of the CEA provide the Commission with rulemaking authority to establish business conduct standards and requirements relating to the real-time reporting requirements on swap dealers and major swap participants.

[18] Section 4r(a)(3) of the CEA provides that for swaps in which only one counterparty is a swap dealer or MSP, the swap dealer or MSP is required to report the swap to a registered SDR. For swaps in which only one counterparty is a swap dealer and the other is an MSP, the swap dealer is required to report to a registered SDR. For all other swaps, Section 4r(a)(3) provides that the counterparties to the swap shall select a counterparty to report to a registered SDR.

[19] The real-time reporting requirements pursuant to Section 2(a)(13) of the CEA are separate and apart from the requirements to report swap transaction information to a registered SDR. The reporting requirements for all swap transaction information to an SDR are found in Sections 2(a)(13)(G) and 4r(a)(1) of the CEA. Specifically, Section 2(a)(13)(G) of the CEA provides that [e]ach swap, (whether cleared or uncleared) shall be reported to a registered swap data repository." In addition, Section 4r(a)(1) provides that "[e]ach swap that is not accepted for clearing by any [DCO] shall be reported to [an SDR] described in section 21 [of the CEA];" or if no SDR exists, to the Commission.

[20] In considering different schemes of real-time public reporting requirements, the Commission also considered a "first touch" method of reporting whereby the swap dealer, MSP or swap market where a swap transaction occurred would have been required to real-time report the transaction by posting the transaction on its Internet Web site or through other electronic means. The Commission chose not to pursue a "first touch" method because it would likely lead to greater fragmentation of market data, increased search costs for market participants and potential concerns with the quality of the data that would be publicly disseminated.

[21] *See* Section 754 of the Dodd-Frank Act which states: "Unless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of 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."

and train the necessary staff and develop and implement the necessary policies and procedures to implement the proposed rules. The Commission's proposed rules provide that appropriate minimum block sizes will be published by registered SDRs beginning in January 2012.[22] Accordingly, it is anticipated that registered entities and registrants will have begun their compliance by that time.

The Commission requests comment on what would be an appropriate implementation schedule (*i.e.,* effective date) for the final rules. In addition, the Commission requests specific comment on the following issues:

- How do commenters believe that an appropriate implementation schedule should be structured? Should there be a phased-in approach? Please provide specific examples.
- Do commenters believe that different types of reporting parties (*e.g.,* swap dealers, MSPs and end-users) should have different implementation timeframes? If so, why and what timeframes? If not, why and what timeframe?
- Do commenters believe that different types of execution (*e.g.,* SEF, DCM and off-facility) should have different implementation timeframes? If so, why and what timeframes? If not, why and what timeframe?
- How long would swap dealers, MSPs and end-users need to establish the appropriate connections to report off-facility swaps to registered SDRs? Please explain.
- How long after registration would registered SDRs need to accept and publicly disseminate swap transaction and pricing data in real-time? Please explain.
- Should there be different implementation timeframes for particular asset classes, markets or contracts? If so, what criteria should be used to select those asset classes, markets or contracts?
- Should the implementation timeframes for real-time reporting and public dissemination requirements for swaps and security-based swaps be coordinated?
- Should there be different implementation timeframes for the block trade and large notional swap rules explained in the discussion relating to proposed § 43.5 below?

[22] *See* discussion relating to proposed § 43.5(g)(4) below.

B. Section-by-Section Analysis

1. Proposed Section 43.1—Purpose, Scope and Rules of Construction

The proposed rules apply to all swaps as defined in Section 1a(47) of the CEA and as may be further defined by Commission regulations. The categories of swaps described in Section 2(a)(13)(C) of the CEA account for all swaps, whether cleared or uncleared, and regardless of whether a swap is executed on a SEF, DCM or off-facility. The proposed rules apply real-time reporting requirements to SEFs, DCMs, SDRs and the parties of a swap, including registered or exempt swap dealers, registered or exempt MSPs and U.S.-based end-users.

The Commission requests comment generally on the scope of transactions covered by this part. In addition, the Commission requests specific comment on which parties to a swap should be covered by the reporting requirements in this part in order to enhance price discovery?

2. Proposed Section 43.2—Definitions

Proposed § 43.2 contains definitions for, inter alia, the following terms: "Affirmation"; "As Soon As Technologically Practicable"; "Asset Class"; "Confirmation"; "Execution"; "Public Dissemination" or "Publicly Disseminate"; "Real-Time Disseminator"; "Reportable Swap Transaction"; "Swap Instrument"; and "Third-Party Service Provider".

Affirmation

Proposed § 43.2(b) defines "affirmation" as the process (electronically, orally, in writing or otherwise) in which the parties to a swap verify that they agree on the primary economic terms of a swap, but not necessarily all terms of the swap. The affirmation of the swap is only the agreement to the primary economic terms of the swap, as distinguished from the confirmation of a swap in which all of the terms of the swap are agreed to in writing to memorialize the agreement of all parties to the swap. Such confirmation legally supersedes any previous agreement of the parties.

Affirmation and execution can, but do not necessarily, occur at the same time. In either case, affirmation and execution always occur prior to the confirmation of a swap. One further distinction is that "affirmation", as defined in the proposed rules, differs from "confirmation by affirmation". Some confirmation service vendors (*e.g.,* Deriv/SERV, MarkitSERV) have used the term "affirmation" to describe the process by which one party to a swap (usually an end-user) electronically acknowledges its assent to complete swap terms submitted to the vendor by its counterparty (usually a dealer). This process allows for electronic confirmation even when one party to the swap does not have the systems necessary to submit swap terms to the vendor electronically. Upon such assent to complete swap terms, a swap is legally confirmed (*i.e.,* "confirmation by affirmation"). Parties that use a confirmation by affirmation process previously will have affirmed the primary economic terms of the trade and therefore executed the trade pursuant to the definitions in the proposed rules.

As Soon as Technologically Practicable

Section 2(a)(13)(A) of the CEA defines "real-time public reporting" to mean "to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed." "As soon as technologically practicable" and "executed" are not defined in the Dodd-Frank Act.[23]

The proposed rules provide definitions for "as soon as technologically practicable" and "executed". Proposed § 43.2(d) defines the term "as soon as technologically practicable" to mean as soon as possible, taking into consideration the prevalence of technology, implementation and use of technology by comparable market participants. In defining "as soon as technologically practicable", the Commission has considered that this term may have different interpretations for different parties to a swap (*i.e.,* swap dealers, MSPs and end-users), for different types of swaps (*e.g.,* energy swaps, credit default swaps, interest rate swaps, etc.) and for different methods of execution (*i.e.,* SEFs, DCMs and off-facility). Staff considered real-time reporting regimes that are currently in place, comments by market participants at external meetings, the discussions at the Roundtable and the potential costs to market participants, among other things. Cost, access to the latest technology and other factors may prevent some of the fastest, most efficient technology from being available to all market participants. Because of these factors, the Commission recognizes that what is "technologically practicable" for one party to a swap may not be the same as what is "technologically practicable" for another party to a swap.

[23] The terms "execution" and "executed" are discussed below.

The Commission requests comment on whether the term should account for other considerations not presently identified in the definition.

Asset Class

Proposed § 43.2(e) defines the term "asset class" to mean the broad category of goods, services or commodities underlying a swap. The asset classes include, but are not limited to, the following five major categories: interest rate, currency, credit, equity and other commodity.[24] In proposing these five major categories, the Commission considered market statistics that distinguish between those general types of underlying instruments, as well as market infrastructures that have been established for these five types of instruments. The interest rate asset class would encompass the underlying of any swap which is primarily based on one or more reference rates, such as swaps of payments determined by fixed and floating rates. The currency asset class would encompass the underlying of any swap that is primarily based on rates of exchange between different currencies, changes in such rates or other aspects of such rates including any swap that is a foreign exchange option. This category includes foreign exchange swaps defined in Section 1a(25) of the CEA. The credit asset class would encompass the underlying of any swap that is primarily based on one instruments of indebtedness, including without limitation any swap primarily based on one or more broad-based indices related to instruments of indebtedness and any swap that is an index credit default swap or a total return swap on one or more indices of debt instruments. The equity asset class would encompass the underlying of any swap that is primarily based on equity securities, including, without limitation, any swap primarily based on one or more broad-based indices of equity securities and any total return swap on one or more equity indices. The other commodity asset class would encompass the underlying of any swap not included in the credit, currency, equity or interest rate asset class categories, including, without limitation, any swap for which the primary underlying notional item is a physical commodity or the price or any other aspect of a physical commodity.[25]

The Commission requests comment on the following issues related to the definition of asset class:

- Do commenters agree with the proposed asset class categories? If not, why? Should there be any additional categories of asset classes? Should any categories of asset classes in the proposed definition be changed or removed?
- Do commenters agree on the proposed method of allocating swaps among asset class categories? If not, why?
- Should the Commission classify cross-currency rate swaps as belonging to the interest rate asset class or to the currency asset class? Please explain.
- Should the asset class for other commodity be divided further (*e.g.,* agricultural commodity, energy commodity, *etc.*)? If so, how should it be divided?

Confirmation

Proposed § 43.2(g) defines the term "confirmation" to mean the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronic or otherwise). A confirmation between parties to a swap may occur in various ways including via facsimile, via "confirmation by affirmation" and via electronic matching. A confirmation will contain all of the terms to a swap that have been agreed to between two parties, whereas an affirmation contains a subset of the terms of the confirmation.

Execution

As noted above, swap counterparties and reporting entities must report "as soon as technologically practicable after the time at which the swap transaction has been executed."[26] Proposed § 43.2(k) defines "execution" as the agreement between parties to the terms of a swap that legally binds the parties to such terms under applicable law. An agreement may be in electronic form (*e.g.,* on a swap market or via instant message), oral (*e.g.,* over the phone), in writing (*e.g.,* a bespoke, structured transaction where documents are exchanged) or in some other format not contemplated at this time. Execution immediately follows or is simultaneous with the pre-execution affirmation of the swap. The Commission notes that the proposed definition of execution does not attempt to define what constitutes a legally enforceable contract, only that execution occurs if and when the parties have formed a legally enforceable contract (which is a matter to be decided by applicable law).[27] If pre-execution affirmation of the primary economic terms creates a legally enforceable contract under applicable law, then it would also constitute execution. If pre-execution affirmation does not create a legally enforceable contract, then execution would not have occurred at that stage.

Public Dissemination and Publicly Disseminate

Proposed § 43.2(r) defines "public dissemination" and "publicly disseminate" to mean publishing and making available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in a machine-readable format. The definition encompasses the non-delayed provision of such data to the public, including market participants, end-users, data vendors and news media.

Real-Time Disseminator

Proposed § 43.2(s) defines "real-time disseminator" to mean any registered SDR or third-party service provider that is responsible for accepting and publicly disseminating swap transaction and pricing data in real-time from multiple sources, in accordance with proposed part 43.

Reportable Swap Transaction

Proposed § 43.2(v) defines "reportable swap transaction" to mean any executed swap, novation, swap unwind, partial novation, partial swap unwind or such post-execution event that affects the price of a swap. A reportable swap transaction includes not only the execution of a swap contract, but also certain price-affecting events that occur over the "life" of a swap. The Commission believes novations and swap unwinds are events that clearly affect the price of the swap and, therefore, should be publicly disseminated in real-time. In addition to novations and swap unwinds, other price-affecting events over the life of a swap may be considered reportable swap transactions. For example, certain amendments that change the price terms of a swap may be subject to the real-time public reporting requirements. Further, the Commission recognizes that certain

[24] Proposed § 43.2(e) also provides that the Commission may determine other asset classes.

[25] Proposed § 43.2(q) defines "other commodity" to mean any commodity that cannot be grouped in one of the other four asset classes (*i.e.,* interest rate, currency, credit, equity). Other commodities may include physical commodities (*e.g.,* natural gas, oil) but may also include non-physical commodities (*e.g.,* weather and property).

[26] Section 2(a)(13)(A) of the CEA.

[27] Because contract law varies by jurisdiction, the time at which a legally enforceable contract is formed may differ based on the applicable state or local law.

market participants may enter into a swap and then immediately enter into an amendment to the swap that alters the price terms, thus reducing transparency and price discovery. The Commission believes that including such post-execution price-affecting events to be reportable for the purposes of real-time public reporting will enhance the transparency and price discovery attributes of swaps trading.

The Commission requests comments on other post-execution events that could affect price and that should be considered reportable swap transactions.

Swap Instrument

Proposed § 43.2(y) defines "swap instrument" to mean each swap in the same asset class with the same or similar characteristics. Under proposed § 43.5, discussed below, registered SDRs would determine the appropriate minimum block size based on the type of swap instrument. After a registered SDR sets the appropriate minimum block size for a swap instrument and groups a specific swap contract that is listed on a swap market into a category of swap instrument, a swap market that lists such swap contract would then reference such appropriate minimum block size when adopting the minimum block trade size for such swap. The Commission believes that it is appropriate to group particular swap contracts into various broad categories of swap instruments in determining the appropriate minimum block size.

The Commission is requesting general and specific comments on swap instruments, as described in the discussion of appendix A to proposed part 43 below.

Third-Party Service Provider

Proposed § 43.2(bb) defines "third-party service provider" to mean an entity, other than a registered SDR, that publicly disseminates swap transaction and pricing data in real-time on behalf of a swap market or, in the case of an off-facility swap where there is no registered SDR available to publicly disseminate the data in real-time, on behalf of a reporting party.

3. Proposed Section 43.3—Method and Timing for Real-Time Public Reporting

Section 2(a)(13) of the CEA does not provide an explicit method or timeframe in which swap transaction and pricing data must be reported to the public in real-time. Instead, Section 2(a)(13) of the CEA provides the Commission with authority to prescribe rules requiring: (1) The parties to a swap transaction (including agents of the parties) to report swap transaction and pricing data to the appropriate registered entity in a timely manner;[28] and (2) registered entities to publicly disseminate swap transaction and pricing data.[29] In addition, Section 2(a)(13)(B) of the CEA provides that the Commission is authorized to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery. Accordingly, the Commission's proposal in § 43.3 sets out both the manner in which parties to a swap must report the swap transaction and pricing data to the appropriate registered entity, as well as the manner in which registered entities must publicly disseminate such data. In addition, proposed § 43.3 sets out requirements for: (1) The acceptable forms of media through which swap transaction and pricing data must be made available to the public; (2) the appropriate methods to cancel or correct erroneous or omitted data that has been publicly disseminated; (3) the hours of operation that swap markets and registered SDRs must maintain for the public dissemination of swap transaction and pricing data; and (4) the recordkeeping of data by swap markets and registered SDRs.

i. Responsibilities of the Reporting Party To Report Data

As discussed above, Section 2(a)(13)(F) of the CEA provides that the parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity. In general, proposed § 43.3(a) provides that the "reporting party" to each swap transaction shall be responsible for reporting any reportable swap transaction to a registered entity as soon as technologically practicable.[30] Proposed § 43.2(w) defines "reporting party" to mean a party to a swap with the duty to report a reportable swap transaction to a registered entity. Under this proposal, the determination of who has this duty depends on whether the reportable swap transaction is executed on a swap market. For reportable swap transactions that are executed on a swap market, proposed § 43.3(a)(2)(i) provides that the requirement for parties to report the swap transaction and pricing data is itself satisfied by the act of execution on the swap market. The Commission believes that this approach should result in the timeliest and most efficient method of reporting swap transaction and pricing data, since swap markets by definition would have immediate access to the most accurate execution information related to each swap transaction (*e.g.,* information on the counterparties to the swap, date and time of execution, bid-offer information, final pricing information, whether the swap should be deemed a block trade, *etc.*). Proposed § 43.3(a)(2)(ii) recognizes that block trades may not be executed on a swap market, but would be effective pursuant to the rules of the swap market. For that reason, this section would require the reporting party to the block trade to report such trades to the swap market in accordance with the rules of the swap market and proposed § 43.5.

For off-facility swaps, proposed § 43.3(a)(3) provides that, except otherwise provided in proposed § 43.5, the reporting party must report (*i.e.,* transmit or otherwise electronically transfer) swap transaction and pricing data to a registered SDR as soon as technologically practicable. Once a reporting party has reported its swap transaction and pricing data to a registered SDR, the reporting party has satisfied its requirement to report pursuant to Section 2(a)(13)(F) of the CEA and this proposed part 43.

The Commission believes that advanced technologies presently exist through which a reporting party to an off-facility swap can send swap transaction and pricing data to a registered SDR as soon as technologically practicable. Through discussions with market participants, the Commission understands that many swaps are executed over the telephone and then inputted manually into electronic recording systems. The Commission believes that reporting parties should remain current with changes in technology and regularly update their technology infrastructure to decrease the time of transmission of swap transaction and pricing data to real-time disseminators.[31]

[28] *See* Section 2(a)(13)(F) of the CEA.

[29] *See* Section 2(a)(13)(D) of the CEA. As discussed below, the Commission's proposal requires registered entities to publicly disseminate swap transaction and pricing data "as soon as technologically practicable". *See* Section 2(a)(13)(A).

[30] The Commission proposes to define "timely manner" to mean "as soon as technologically practicable".

[31] Two examples of how reporting technology can improve over time are seen in the evolution of (1) the Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE"), and (2) the reporting of over-the-counter ("OTC") equity securities. Under the reporting rules for TRACE, the current maximum reporting time requirement for publicly reporting transaction and pricing data for corporate bonds is 15 minutes. FINRA staff has noted in meetings with

Continued

The determination of which party to a swap will be deemed the reporting party for the purposes of proposed § 43.3(a) chiefly depends on the types of entities that are parties to the swap.

Specifically, proposed § 43.3(a)(3) provides that for off-facility swaps:

- If only one party is a swap dealer or MSP, the swap dealer or MSP shall be the reporting party.
- If one party is a swap dealer and the other party is an MSP, the swap dealer shall be the reporting party.
- If both parties are swap dealers, the swap dealers shall designate which party shall be the reporting party.
- If both parties are MSPs, the MSPs shall designate which party shall be the reporting party.
- If neither party is a swap dealer or an MSP, the parties shall designate which party (or its agent) shall be the reporting party.

Through discussions with market participants at the Roundtable and external meetings, the Commission believes that swap dealers and MSPs are more likely to have the infrastructure and resources available to report their swap transaction information to a registered SDR in a quicker period of time than parties to an end-user-to-end-user, off-facility swap. Indeed, the Commission recognizes that non-financial end-users do not frequently enter into swap transactions and may not have the technology readily available to report swap transaction and pricing data for the purposes of the real-time reporting requirements under Section 2(a)(13)(F) of the CEA, and therefore, may lead to longer reporting time periods from execution for such reporting parties.

The Commission understands that the requirement to report swap transaction and pricing data as soon as technologically practicable may increase costs for reporting parties as a result of such parties having to upgrade their technology infrastructures. Based on discussions with market participants, however, the Commission believes that technology solutions may develop, such as web portals and other Internet-based interfaces, which will aide reporting parties in complying with the requirements proposed in § 43.3(a) and reduce the cost burden associated with their compliance. In addition, the Commission believes that the total number of end-user to end-user swaps will be small and thus the costs imposed on end-users will likely be lower relative to the total number of swaps.[32]

The Commission's proposal with respect to off-facility swaps is consistent with the reporting requirements for the reporting of uncleared swaps to a registered SDR under Section 4r(a) of the CEA.[33] After consulting with market participants at the Roundtable and in meetings with market participants, the Commission believes that this consistency may reduce technology infrastructure costs for swap dealers and MSPs, particularly since swap dealers and MSPs will likely establish direct connectivity to registered SDRs to satisfy the reporting requirements for the reporting of uncleared swaps under Section 4r(a) of the CEA.

In the event that no registered SDR exists or is available to accept and publicly disseminate swap transaction and pricing data, proposed § 43.3(a)(4) establishes a special rule for the real-time reporting of these swaps. Specifically, proposed § 43.3(a)(4) provides that the reporting party may report such data to a third-party service provider, which provides public dissemination services. Similar to the requirements placed on swap markets when such markets choose to publicly disseminate through a third-party service provider, the reporting party will be required to ensure that the swap transaction and pricing data is publicly disseminated in real-time.

The Commission requests comment related to the responsibilities of the parties to a swap to report swap transaction and pricing data. In addition, the Commission requests specific comment on the following issues:

- Should the Commission establish maximum timeframes in which reporting parties must report to a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time (*e.g.,* as soon as technologically practicable but no later than five minutes)? If so, what should the maximum timeframes be and how should they be determined?
- Do commenters believe that the rules should require that any additional parties to a swap be the reporting party for a swap? If so, which parties and in which circumstances?
- Should the Commission's final rules address the reporting and public dissemination of swap transaction and pricing data for swaps, which are transacted between two non-U.S. persons? If so, how should the Commission's final rules address these situations?
- In off-facility swap transactions where a non-U.S. swap dealer or non-U.S. MSP transacts with a U.S.-based end-user, which party to the swap should have the obligation to report to a real-time disseminator? Are there other situations involving non-U.S. parties where this issue may arise? How should the Commission address these situations in its final rules?
- Should there be an alternative method of reporting and subsequently disseminating swap transaction and pricing data in real-time when no registered SDR is available to accept and publicly disseminate such data? If there is no registered SDR available and there is no third-party service provider available to accept and publicly disseminate data for a swap transaction, what should the real-time reporting requirement be for such transaction?
- Is there a better or more efficient alternative to have swap transaction and pricing data reported by a reporting party to a registered SDR for public dissemination in real-time? If so, what would that be?

ii. Responsibilities of Swap Markets To Publicly Disseminate Swap Transaction and Pricing Data in Real-Time

Section 2(a)(13)(D) of the CEA gives the Commission the authority to require registered entities to publicly disseminate swap transaction and pricing data.[34] Proposed § 43.3(b) provides the method and timeliness of public dissemination of swap transaction and pricing data. Proposed § 43.3(b) distinguishes the public dissemination requirement for swaps that are executed on a swap market versus those swaps that are executed off-facility.[35] Irrespective of the mode of

Commission staff that over 90% of its trades are reported within five minutes. *See* FINRA Rule 6730 ("Transaction Reporting"). Available at: *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4402.*

With respect to the OTC securities market, FINRA has recently reduced the reporting requirements for these securities to within 30 seconds of execution. *See* Securities Exchange Act Release No. 61819 (March 31, 2010), 75 FR 17806 (April 7, 2010 (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of File No. SR–FINRA–2009–061)); *See also,* FINRA Rules 6282(a); 6380A(a) and (g); 6380B(a) and (f); 6622(a) and (f); 7130(b); 7230A(b); 7230B(b); and 7330(b).

[32] In addition, the Commission believes that increased transparency may lead to more robust price competition, thus decreasing bid-offer spreads in certain swap contracts and benefiting end-users.

[33] The requirements of Section 4r(a)(3) of the CEA are discussed in footnote 18 above.

[34] As noted above, Section 1a(40) of the CEA, as amended by Section 721(a) of the Dodd-Frank Act, defines "registered entity" to include SEFs, DCOs, DCMs and SDRs. The Commission has determined, however, not to apply the Section 2(a)(13)(D) requirement to DCOs because it believes that the value of timely public dissemination outweighs the benefit of waiting until a swap is presented to a clearing organization.

[35] Block trades that are transmitted pursuant to a swap market's rules are addressed in proposed § 43.5.

execution, the Commission sought to provide market participants with reasonable guidelines to report and publicly disseminate swap transaction and pricing data in real-time.

With respect to reportable swap transactions that are executed on a swap market, proposed § 43.3(b)(1)(i) provides that a swap market shall satisfy its requirement to publicly disseminate swap transaction and pricing data by: (1) Sending, or otherwise electronically transmitting, swap transaction and pricing data to a registered SDR that accepts swaps for the particular asset class of reportable swap transactions; or (2) disseminating such data to the public through a third-party service provider operating on behalf of the swap market.[36] The Commission notes that a swap market that relies on a third-party service provider to disseminate swap transaction and pricing data, for example through a contractual agreement, remains responsible for compliance with the rules of proposed part 43.

If a swap market sends swap transaction and pricing data to a registered SDR, proposed § 43.3(b)(1)(i) provides that such data must be sent as soon as technologically practicable after the swap has been executed. As a result of industry comments made during staff meetings and at the Roundtable, the Commission believes that technologies presently exist through which a swap market can send swap transaction and pricing data to a registered SDR almost instantaneously after execution of a reportable swap transaction.[37] Under the proposal, once the swap market has sent the swap transaction and pricing data to a registered SDR, the swap market will have satisfied its dissemination requirement.

In contrast, proposed § 43.3(b)(1)(ii) provides that if a swap market sends swap transaction and pricing data to a third-party service provider, the swap market does not satisfy its requirement to publicly disseminate swap transaction and pricing data until such data is actually disseminated to the public. The Commission's proposal distinguishes between a registered SDR and a third-party service provider because the Commission would have oversight authority over a registered SDR, but not over a third-party service provider. This distinction would be especially important if, for example, a third-party service provider failed to publish swap transaction and pricing data in real-time. Under those circumstances, the Commission may have no authority over the third-party service provider to remedy the failure. Since the swap market is still obligated to publicly disseminate, the Commission may require the swap market to resolve the failure and publicly disseminate the swap transaction and pricing data through another third-party service provider or a registered SDR. Accordingly, the Commission would expect that a swap market that uses a third-party service provider to meet its public dissemination obligation should be vigilant in monitoring the timeliness and accuracy of the provider's publication of the swap market's swap transaction and pricing data.

Proposed § 43.3(b)(2)(i) prohibits swap markets or any reporting party to a swap from disclosing the swap transaction and pricing data before the real-time disseminator has publicly disseminated such data. The Commission believes that this prohibition will ensure that swap transaction and pricing data is disseminated uniformly and is not published in a manner that creates unfair advantages for any segment of market participants.

The proposed rules do allow for swap markets and swap dealers to provide their market participants and customers, respectively, with swap transaction and pricing data for swaps that they execute. In particular, proposed § 43.3(b)(2)(ii) provides that notwithstanding the non-disclosure provision in proposed § 43.3(b)(2)(i), a swap market may make swap transaction and pricing data available to participants on its market prior to the public dissemination of such data; however, the swap market must send such swap transaction and pricing data to a real-time disseminator at the same time as or earlier than it makes such data available to its market participants. Similarly, proposed § 43.3(b)(2)(iii) provides that notwithstanding the non-disclosure provision in proposed § 43.3(b)(2)(i), a swap dealer may make swap transaction and pricing data for off-facility swaps available to its customer base prior to the public dissemination of such data; however, such swap dealer must send such swap transaction and pricing data to a registered SDR at the same time as or earlier than it makes such data available to its customer base. In both cases, the data may only be made available to the particular market (*e.g.,* data for a swap executed on a particular SEF or DCM may only be shared with market participants on that SEF or DCM). The Commission believes that granting swap markets and swap dealers the flexibility to provide swap transaction and pricing data to its market participants or customer base, respectively, concurrent with reporting to the real-time disseminator may incentivize a rapid transmittal of data to the real-time disseminator.

The Commission requests comment generally on the responsibilities of swap markets to publicly disseminate real-time swap transaction and pricing data. In addition, the Commission requests comment on the following issues:

- Should the Commission establish a maximum timeframe in which swap markets must report swap transaction and pricing data to a real-time disseminator? If so, what is an appropriate maximum timeframe and why?
- Do commenters agree with the Commission's proposal that swap markets satisfy their public dissemination requirement by either sending to a registered SDR that accepts and disseminates swap transaction and pricing data or by publicly disseminating through a third-party service provider? If not, why? Should there be any other means by which a swap market can satisfy its public dissemination requirement? If yes, by what other means?

iii. Requirements for Registered SDRs

Sections 2(a)(13)(D) and 21(c)(4)(B) of the CEA provide the Commission with the authority to require registered SDRs to publicly disseminate swap transaction and pricing data in real-time. In particular, Section 2(a)(13)(D) provides that the Commission may require registered entities to publicly disseminate swap transaction and pricing data. Registered SDRs are registered entities as defined in Section 1(a)(40)(E) of the CEA. Section 21(c)(4)(B) of the CEA provides that an SDR must provide swap transaction information in such form and at such frequency as the Commission may require to comply with the real-time reporting requirements under Section 2(a)(13).

Pursuant to these authorities, the Commission is proposing § 43.3(c)(1) to require that registered SDRs that accept and publicly disseminate such data in real-time to comply with proposed part

[36] As discussed immediately below, proposed§ 43.3(b)(2) prohibits a swap market or reporting parties from disclosing swap transaction and pricing data prior to sending such data to a real-time disseminator.

[37] *See, e.g.,* Comments by Steve Joachim, Executive Vice President, Transparency Services, FINRA ("[T]he technology for collecting, aggregating, and disseminating [swap] data, assuming [the] use [of] current infrastructures * * * can allow [real-time public reporting] to work pretty efficiently.") Roundtable Tr. at 277–78.

49 of the Commission's regulations.[38] Under proposed part 49, a registered SDR may choose, but would not be required, to publicly disseminate swap transaction and pricing data in real-time for an asset class of swaps. Further, a registered SDR that accepts swap transaction and pricing data for public dissemination must publicly disseminate such data as soon as technologically practicable upon receipt of such data. Proposed § 43.3(c)(2) provides that if a registered SDR chooses to publicly disseminate swap transaction and pricing data in real-time for its specified asset class,[39] the registered SDR must accept and publicly disseminate swap transaction and pricing data for all swaps within such asset class. This requirement is intended to minimize the number of swaps that are not accepted by a registered SDR for public dissemination by enabling market participants to easily identify the SDR that accepts particular asset classes. In addition, proposed § 43.3(c)(3) provides that any registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review of its security and other system controls, in accordance with established audit procedures and standards, for the purposes of ensuring that the requirements of proposed part 43 are met.

The Commission requests comment generally on the requirements for registered SDRs under proposed part 43. In addition, the Commission requests comment on whether it should require registered SDRs to publicly disseminate all real-time swap transaction and pricing data.

iv. Requirements for Third-Party Service Providers

If a swap market chooses to publicly disseminate swap transaction and pricing data through a third-party service provider, proposed § 43.3(d) provides that the swap market must ensure that the provider maintains standards that are, at a minimum, equal to those standards for registered SDRs described in proposed part 43 and the relevant provisions relating to real-time public reporting that will be proposed in part 49 of the Commission's regulations. In addition, this section provides that the swap market must ensure that the Commission has access to any swap transaction and pricing data, either through the swap market or directly through the third-party service provider.

v. Availability of Real-Time Swap Transaction and Pricing Data

Under proposed § 43.3(e), registered SDRs that report swap transaction and pricing data to the public in real-time, must make the data available and accessible in an electronic format that is capable of being downloaded, saved and/or analyzed. The Commission is proposing this provision to address the concern that a registered SDR may flash real-time swap transaction and pricing data to selected market participants with the technology to view such data without making such information available to the public and all market participants. Requiring registered SDRs to allow market participants and the public to download, save and/or analyze the real-time swap transaction and pricing data upon public dissemination, ensures equal access to real-time swap transaction and pricing data.

vi. Errors or Omissions

Proposed § 43.3(f)(1) sets out the process through which any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled. Section 43.3(f)(1) sets out different processes depending on whether the data error or omission was discovered by the reporting party to the swap or the non-reporting party. Proposed paragraph (f)(1)(i) provides that if the non-reporting party becomes aware of an error or omission in the data reported for its swap, it shall promptly notify the reporting party of the correction. Proposed paragraph (f)(1)(ii) provides that if the reporting party becomes aware of an error or omission in the reported data, it is required to promptly submit the corrected data to the swap market or real-time disseminator. Proposed paragraph (f)(1)(iii) provides that if the swap market becomes aware of an error or omission in the swap transaction and pricing data reported for a swap, whether or not it received notification from the reporting party, the swap market shall promptly submit corrected data to the real-time disseminator. Proposed paragraph (f)(1)(iv) provides that a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time must publicly disseminate any cancellations or corrections to such data as soon as technologically practicable after receipt or discovery of such cancellation or correction.

The proposal also seeks to prevent fraudulent dissemination for the purpose of distorting market pricing. Specifically, proposed paragraph (f)(2) of this section provides that reporting parties, swap markets and registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time are prohibited from submitting or agreeing to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in publication or to otherwise evade the reporting requirements of proposed part 43.

Proposed paragraph (f)(3) of this section sets forth the appropriate method of canceling incorrectly published swap transaction and pricing data. Specifically, this paragraph provides that a real-time disseminator must cancel incorrect data that has been disseminated to the public by publishing a cancellation of the incorrect data in the format and manner described in appendix A to proposed part 43.

Proposed paragraph (f)(4) of this section sets forth the appropriate method of correcting erroneous or omitted swap transaction and pricing data. Specifically, this paragraph provides that a real-time disseminator must correct any erroneous or omitted data that has been disseminated to the public by first publicly disseminating a cancellation of the incorrect data and then publicly disseminating the correct data pursuant to the format described in appendix A to proposed part 43.

Depending on the situation, a cancellation may or not be followed by a correction. For example, a cancellation may occur in a situation where a clearinghouse does not accept a particular swap for clearing and, therefore, the swap may be busted and not require a correction. In another situation, one or more terms to a swap may be incorrectly reported by the party responsible for reporting the swap, and upon confirmation of the swap the error in the terms would be realized. Under the proposed rules, such a situation would require a cancellation of the original incorrectly reported data, followed by a correction with the correct swap transaction and pricing data. Whenever reporting a cancellation or correction, the real-time disseminator must report the data in the same form

[38] In a forthcoming release, the Commission will propose part 49 of the Commission's regulations, which will set out the requirements that a registered SDR must satisfy in connection with its receipt and public dissemination of swap transaction and pricing data in real-time. Proposed part 49 of the Commission's regulations also will identify the necessary systems that registered SDRs must develop and maintain in order to receive and publicly disseminate such data.

[39] In the forthcoming proposed part 49 of the Commission's regulations, registered swap data repositories will select the asset class(es) for which they accept swaps.

and manner in which it was originally reported and include a date stamp reflecting the time of the original transaction, so that market participants and the public are aware of exactly which swap has been canceled or corrected.

vii. Hours of Operation

Since Section 2(a)(13) of the CEA requires that swap transaction and pricing data be reported and subsequently disseminated to the public in real-time, the Commission proposes that registered SDRs maintain certain hours of operation in order to comply with this legislative requirement. Proposed § 43.3(g)(1) requires registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time to be able to receive and publicly disseminate such data at all times, twenty-four hours a day.

Because the Commission recognizes that a registered SDR periodically may need to conduct maintenance on its electronic systems, proposed § 43.3(g)(2) would permit a registered SDR to declare special closing hours to perform such maintenance on an ad hoc basis. In addition, this section would require a registered SDR to provide advance notice of its special closing hours to market participants and the public. Further, proposed § 43.3(g)(3) provides that registered SDRs should avoid scheduling special closing hours during those periods when the U.S. markets and major foreign swap markets are most active. Proposed § 43.3(h) provides that during special closing hours, a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the capability to receive and hold in queue information regarding reportable swap transactions pursuant to proposed part 43.

The Commission requests comment on the following questions regarding hours of operation:

- Should swap markets have requirements regarding hours of operation for the purposes of the real-time reporting requirements?
- Do the proposed requirements regarding hours of operation provide registered SDRs with sufficient flexibility to conduct the necessary maintenance on their electronic systems?
- Do commenters agree that registered SDRs that accept and publicly disseminate swap transaction and pricing data should have the capability to receive and hold such data in queue during special closing hours? If not, why and are there any alternatives?

viii. Recordkeeping Requirements

Proposed § 43.3(i) requires reporting parties, swap markets and registered SDRs to retain all data related to a reportable swap transaction (including large notional swaps and block trades) for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated. The Commission believes that it is necessary to retain such records in order to recreate transaction profiles for the purposes of trade practice surveillance and compliance. This requirement is separate and distinct from any other recordkeeping requirements under the Commission's regulations, including § 1.31.[40]

The Commission requests comment on the following questions regarding recordkeeping requirements:

- Do commenters believe that the proposed retention period for data related to reportable swap transactions is an appropriate period of time?
- Should the recordkeeping requirement be the same as § 1.31 of the Commission's regulations?
- What are the anticipated costs associated with storing such real-time swap transaction and pricing data for a longer period of time?

ix. Fees Charged by Registered SDRs

The Commission believes that the intent and purpose of Sections 2(a)(13) and 21 of the CEA is for registered SDRs to provide open and equal access to their data collection services for the purposes of real-time public reporting.[41] Consistent with open and equal access to registered SDR services, the Commission further believes that fees or charges adopted by a registered SDR for its data collection services for the purposes of real-time public reporting must be equitable and non-discriminatory. Proposed § 43.3(j) ensures that any fees or charges assessed on a reporting party or a swap market are consistent with the intent and purpose of Sections 2(a)(13) and 21. Proposed § 43.3(j) also prohibits a registered SDR from offering a discount based on the volume of swap transaction and pricing data reported to the registered SDR for public dissemination, unless such discount is offered to all reporting parties and swap markets.

x. Consolidated Public Dissemination of Swap Data

The Commission recognizes the benefits of consolidating the public dissemination of swap transaction and pricing data in real-time.[42] During the Roundtable and in Commission external meetings, several market participants commented on their desire for the Commission to establish a consolidator in order to avoid fragmentation of the publication of swap transaction and pricing data. The Commission believes that a real-time reporting consolidator of swap transaction and pricing data could provide a comprehensive record of all swaps executed in chronological order. Additionally, a real-time reporting consolidator would create greater anonymity for the parties to transactions, particularly for swap dealers and MSPs.

Unlike the federal securities laws,[43] however, neither the CEA nor the Dodd-Frank Act grants the Commission explicit statutory authority to establish a real-time reporting consolidator.[44] The Commission requests comment on methods to encourage the consolidation of publicly disseminated swap transaction and pricing data.

[40] Section 1.31 of the Commission's regulations generally provides, inter alia, all books and records required to be kept by the CEA or the Commission's regulations shall be kept for a period of five years from the date such records come into existence. In addition, § 1.31 provides that the records shall be readily accessible during the first two years of the five year period.

[41] Section 21 of the CEA sets forth the rules with respect to the business conduct standards and regulation of SDRs.

[42] The Commission considered the experience of the European Union under the Markets in Financial Instruments Directive ("MiFID") and its Financial Services Action Plan, which went into effect on November 1, 2007 for OTC equity securities. Under this plan, the European Union broadened post-trade transparency requirements in European OTC equity securities markets. While MiFID required transparency, many market participants expressed concerns about the fragmentation of post-trade transparency under the MiFID regime, especially in OTC trading. The quality, disparate timing of publication and other barriers to consolidation of post-trade data were all highlighted as problems by the Committee of European Securities Regulators ("CESR") in its Technical Advice report. *See* "CESR Technical Advice to the European Commission in the Context of the MiFID Review and Responses to the European Commission Request for Additional Information" (CESR/10–802, CESR/10–799, CESR/10–808, CESR/10–859), July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7003*.

[43] *See, e.g.,* 15 U.S.C. 78k–1.

[44] As mentioned above, FINRA oversees TRACE, which is a mechanism through which post-trade data regarding OTC secondary market securities in fixed income is reported. FINRA requires its broker-dealer member firms to report transactions to TRACE under an SEC-approved set of rules. Beginning in 2002, TRACE published transaction data on a consolidated tape. TRACE first published data on very liquid transactions and later phased-in additional products. More information on TRACE can be accessed at: *http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/index.htm*.

4. Proposed Section 43.4 and Appendix A to Proposed Part 43—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

As noted above, Section 2(a)(13)(B) authorizes the Commission to prescribe regulations to make swap transaction and pricing data available in real-time in such form as the Commission determines appropriate to enhance price discovery. Proposed § 43.4 establishes the format in which such data will be publicly disseminated.

Proposed § 43.4(a) provides that swap transaction information shall be reported to a real-time disseminator so that the real-time disseminator can publicly disseminate swap transaction and pricing data in real-time in accordance with proposed part 43, including the manner and format described in appendix A to proposed part 43.[45] Appendix A to proposed part 43 provides a list of data fields for which a registered SDR must publicly disseminate swap transaction and pricing data. The descriptions and examples in appendix A to proposed part 43 are intended to provide guidance on an acceptable public reporting format and order for the data fields that are listed.

Proposed § 43.4(b) provides that any registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information in the data fields described in appendix A to proposed part 43.

Proposed § 43.4(c) provides that a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time may, as necessary, require reporting parties and swap markets to report such information in addition to the data described in appendix A to proposed part 43, in order to match the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a registered SDR or confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional information shall not be publicly disseminated, on either a transactional or aggregate basis, by the registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time.

Proposed § 43.4(d) provides that the Commission may determine from time to time to amend the data fields described in appendix A. This section gives the Commission flexibility to add, modify or delete data fields as the Commission may deem appropriate and necessary to enhance price discovery and prevent the disclosure of the identities of the parties to any swap.

The Commission requests comment generally on the real-time reporting and public dissemination of the data described in appendix A to proposed part 43. In addition, the Commission requests comment on the following issues:

- Should the Commission specify the format and/or manner in which swap transaction and pricing data must be reported to a real-time disseminator?
- Should the Commission require that registered SDRs follow a specified order and format for the public dissemination of swap transaction and pricing data instead of providing examples and guidance?

i. Ensuring the Anonymity of the Parties to a Swap

Sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA emphasize the importance of maintaining the anonymity of the parties to a swap.[46] Proposed § 43.4(e)(1) prohibits the disclosure of swap transaction and pricing data that is publicly disseminated in real-time, which identifies or otherwise facilitates the identification of a party to a swap. This section further provides that a registered SDR may not report such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.

The Commission understands that this latter prohibition may lead to a loss of clarity with respect to the precise characteristics of swaps in certain circumstances.[47] Proposed § 43.4(e)(2) provides that a reporting party or a swap market must provide a real-time disseminator with a specific description of the underlying asset and tenor of a swap. The description must be general enough to provide anonymity, but specific enough to provide for a meaningful understanding of the swap. The Commission recognizes that it is conceivable that in situations where few parties trade a particular type of underlying asset, the description of that asset may inadvertently reveal the identity of one or more party(ies) to the swap.

For off-facility swaps, particularly other commodity swaps with very specific underlying assets, market participants may be able to infer the identity of a party or parties to a swap based on the description of the underlying asset.[48] For example, if the underlying asset to an off-facility swap is an energy commodity contract that has a specific delivery point at Lake Charles, Louisiana and such contract is only traded by two companies, then disclosing the underlying asset to the public would effectively disclose that one of those companies was entering into the trade. Proposed § 43.4(e)(2) allows reporting parties of off-facility swaps to publicly disseminate a description an underlying asset or tenor that by virtue of its real-time reporting would enable market participants to infer the identity of a party to the swap, in a way that does not disclose a party to a swap, but provides a meaningful understanding of the swap for the purpose of price discovery.[49] In the example, instead of saying a specific delivery point of Lake Charles, Louisiana, the reporting party may use a broader geographic region (*e.g.,* Louisiana, Gulf coast, *etc.*) under the Commission's proposal. The Commission believes that the issue of the description being too specific as to divulge the identity of a party to a swap

[45] Proposed § 43.4 would not require that a reporting party or swap market provide swap transaction and pricing data in a particular format or that such data be anonymized prior to being sent to a real-time disseminator. Reporting parties and swap markets must, however, provide real-time disseminators with the information required to publicly disseminate the required data fields.

[46] The legislative history of the Dodd-Frank Act states that "regulators are to ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of the parties to the transactions." 156 Cong. Rec. S5,921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[47] *See, e.g.,* comments from Steve Joachim, Executive Vice President, Transparency Services, FINRA ("I think we have to recognize that when we're talking about transparen[cy] in marketplaces that if we want to pursue the goal of transparency, that trading in transparent markets is different than trading in opaque markets and that you lose some anonymity no matter what happens. There will not be total confidentiality."), Roundtable Tr. at 258.

[48] *See, e.g.,* comments from Peter Axilrod, Managing Director, New Business Development, The Depository Trust & Clearing Corporation ("I guess I'd like to make a plea for people to be careful with commodities. It's a little bit of a different market than what most people have been talking about. There are delivery points all over the country, there are load-serving entities, many of them all over the country, there are producers all over the country, and if you force people to specify a particular delivery point all the time, people are pretty much going to know who's making those trades. So, whatever you do in terms of what commodities data is reported publicly, you have to leave room for some flexibility in terms of anonymization [sic]. So, if the delivery points are too specific, you may never get much anonymizing [sic] of trades, but if you allow the geographic area to be expanded or to have some anonymity criteria and perhaps pick the set of the delivery points that meets the anonymity criteria, something like that needs to be done."), Roundtable Tr. at 252–253.

[49] It is important to note that the reporting requirement in this section is separate from the requirement to report swap transaction information to a registered SDR pursuant to Section 2(a)(13)(G) of the CEA. The CEA does not require swap transaction information be reported in a manner that protects anonymity since such information will not be publicly disseminated.

is more likely to arise when the underlying asset is a commodity. The Commission, however, believes that other asset classes and markets may have similar issues. In contrast, for those swaps that are executed on a swap market, the Commission believes that, since such contracts will be listed on a particular trading platform or facility, it will be unlikely that a party to a swap could be inferred based on the reporting of the underlying asset and therefore parties to swaps executed on swap markets must report the specific underlying assets and tenor of the swap.

The Commission recognizes that swap markets may differ and that new types of swaps may emerge; therefore, the Commission is not proposing specific guidelines at this time for how an underlying asset should be described for the purposes of proposed § 43.4(e)(2). The specificity of the description will vary based on particular markets and contracts, but the proposed rules provide reporting parties with discretion on how to report swap transaction and pricing data. Proposed § 43.3(e)(2) and proposed part 23 of the Commission's regulations require that swap dealers and MSPs who do not disclose a specific description of an underlying asset and/or tenor because such disclosure would facilitate the identity of a party to a swap, must document why the specific information regarding the underlying asset and/or tenor was not publicly disseminated.[50] Further, swap dealers and MSPs must retain and provide such written justifications to the Commission pursuant to proposed part 23 of the Commission's regulations.[51]

The Commission notes that the language found in Section 2(a)(13)(C)(iii) of the CEA, requiring that real-time public reporting be done "in a manner that does not disclose the business transactions and market positions of any person" is similar to the language found in Section 8(a) of the CEA. Section 8(a)(1) of the CEA provides, in relevant part, that "the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets of or names of customers * * *."[52] For the purposes of protecting the confidentiality of participants' business transactions or market positions as required under Section 8(a)(1) of the CEA, the Commission has historically created guidelines for various market information reports (*e.g.,* Bank Participation Reports ("BPRs") and Commitments of Traders ("COT") reports) that prevent market participants and the public from reverse-engineering aggregate data to determine the participants that submitted the data.[53] The Commission believes that the approach in the proposed rules regarding protecting the identities of parties to a swap under Sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA is consistent with the approach to confidentiality under Section 8(a)(1).

The Commission requests comment generally on the protection of identities of the parties to the swap relating to real-time public reporting. In addition, the Commission requests comment on the following issues:

- Do commenters agree with the proposed method for real-time reporting of less specific information with regard to the underlying asset and tenor data fields in order to protect the anonymity of parties to a swap? If not, why?
- Should any additional data fields be allowed to have less specificity to ensure the anonymity of the parties to a swap? Should this proposed provision apply to all asset classes? If so, why?
- In what situations, if any, would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the underlying asset(s) of a swap and how should such underlying asset(s) be reported? Please provide specific examples.
- Do commenters believe that it is appropriate to allow for less specificity than the month and year (as described in appendix A to proposed part 43) for the tenor of the swap? If not, why? If so, in what situations would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the tenor of a swap and how should the tenor be reported? Please provide specific examples.
- What specific parameters for reporting less specificity in the underlying asset(s) and tenor of a swap should be applied to swaps in order to protect the identities of the counterparties?
- Should there be an indication to the public that a description of the underlying asset or tenor lacks specificity in order to protect the identities of the parties to the swap?

ii. Unique Product Identifiers

The Commission anticipates that unique product identifiers may develop for various swap products in various markets. Proposed § 43.4(f) provides that if a unique product identifier is developed and it sufficiently describes the information in one or more of the data fields for public dissemination in real-time, as described in appendix A, then such unique product identifier may be used in lieu of such data fields. If a swap does not have a unique product identifier, the swap transaction and pricing data must contain all of the appropriate product identification fields in appendix A to proposed part 43.[54]

iii. Price-Forming Continuation Data

Proposed § 43.4(g) requires any swap-specific event (including, but not limited to, novations, swap unwinds, partial novations and partial swap unwinds) that occurs during the life of a swap and affects the price of such swap to be publicly disseminated (a "price forming continuation event"). The Commission does not believe that a price-forming continuation event includes the scheduled expiration of a swap, any anticipated interest rate adjustments, or any other event that does not result in a change to the price that would otherwise not have been known at the point of execution.

v. Reporting and Public Dissemination of Notional or Principal Amount

Proposed § 43.4(h) and (i) provide rules for the public reporting of the notional or principal amount for all swaps. Proposed § 43.4(h)(1) would require the reporting party to report the actual notional size of any swap, including large notional swaps, to the registered SDR that accepts and publicly disseminates such data. Proposed § 43.4(h)(2) would require a reporting party to transmit the actual notional size

[50] In a forthcoming release, the Commission will propose part 23 of the Commission's regulations, which will set out the internal business conduct standards for swap dealers and MSPs, including recordkeeping requirements in connection with real-time public reporting.

[51] *See id.*

[52] 7 U.S.C. 12(a)(1).

[53] The BPRs, which provide large-trader positions of banks participating in various financial and non-financial commodity futures, collect data for every market where five or more banks hold reportable positions. The BPRs break the banks' positions into two categories—U.S. Banks and Non-U.S. Banks—and show their aggregate gross long and short market positions for each type. However, in those markets where the number of banks in either category (U.S. Banks or Non-U.S. Banks) is less than five, the number of banks in each of the two categories is omitted and only the total number of banks is shown for that market. Available at:*http://www.cftc.gov/MarketReports/BankParticipationReports/ExplanatoryNotes/index.htm.* Similarly, the COT reports provide a breakdown of each Tuesday's open interest for markets in which 20 or more traders hold positions equal to or above the reporting levels established by the Commission. Available at:*http://www.cftc.gov/MarketReports/CommitmentsofTraders/AbouttheCOTReports/index.htm.*

[54] The Commission is considering the issue of unique product identifiers in two forthcoming rulemakings under proposed parts 45 and 49.

of any block trade to a swap market. Further, a swap market must transmit the actual notional size for all swaps executed on or pursuant to its rules to a real-time disseminator. The Commission believes that the application of the rounding convention for notional or principal size, described in proposed § 43.4(i) should be done at the point of public dissemination (as opposed to the point at which it is reported to real-time disseminator) since this timing would provide for a more efficient audit trail of the swap.

Proposed § 43.4(i) provides that for all swaps the notional or principal amount that must be reported pursuant to proposed § 43.4 and appendix A to proposed part 43 should be rounded pursuant a specific rounding convention. Specifically, proposed § 43.4(i) provides that if the notional or principal amount of a swap is:

- Less than one million, round to the nearest 100 thousand;
- Less than 50 million, but greater than one million, round to the nearest million;
- Less than 100 million, but greater than 50 million, round to the nearest 5 million;
- Less than 250 million, but greater than 100 million, round to the nearest 10 million; and
- Greater than 250 million, use "250+".

For example, if the notional size of a swap is $575 million, the notional size that would be reported by a reporting party to a swap market (assuming such swap is a block trade) would be $575 million. The swap market would then report the notional amount of $575 million to a real-time disseminator and the real-time disseminator would publicly disseminate the notional amount for such block trade as "$250+". By reporting the notional or principal transaction amount pursuant to the rounding convention set forth in proposed § 43.4(i), parties to swaps, particularly those swaps that are of a large notional size, would be given a greater amount of anonymity.

The Commission requests comment generally on all aspects of the proposed rules relating to the reporting and public dissemination of notional or principal amount. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed rounding convention for public dissemination of large notional or principal amount provided in proposed § 43.4(i)? If not, why and provide alternatives?
- Would this rounding convention be appropriate for all swaps? For example, would this apply to swaps with an underlying asset that is a physical commodity with a specific delivery point? If not, why and what additional rounding convention may be needed?
- Does the rounding convention for reporting notional and principal transaction amounts in proposed § 43.4(i) help to protect the anonymity of the parties to a swap?
- Should the actual notional or principal amount be publicly disseminated at a later time?
- Should registered SDRs publish the aggregate volume for each category of swap instrument on a daily basis? If so, why? If not, why not?
- Would the daily publication of aggregate volume of swap instruments be useful to market participants and the public?

v. Appendix A to Proposed Part 43

The Commission anticipates that real-time swap transaction and pricing data may be publicly disseminated by multiple real-time disseminators in the same asset class. In order to reduce the effects of fragmentation and increase consistency both within an asset class and between asset classes, the Commission is proposing that the information in the data fields in appendix A to proposed part 43 be publicly disseminated. In addition, the Commission is providing proposed guidance on the order and format of reporting swap transaction and pricing data.[55] Additionally, the Commission believes that the public dissemination of standardized data should reduce the search costs to the public and market participants, increase consolidation of real-time swap transaction and pricing data and promote post-trade transparency and price discovery.[56] While appendix A to proposed part 43 attempts to provide consistency in describing which real-time data fields must be publicly disseminated, the Commission anticipates that certain fields will be easier to standardize than other fields. For example, it should be easy to standardize the format for an execution time-stamp across all swap transactions; whereas it may be more difficult to achieve standardization when describing an underlying asset. The Commission anticipates that, as markets develop over time, real-time disseminators and market participants may develop a form of standardization for certain data fields in certain asset classes.

While real-time disseminators must disseminate swap transaction and pricing data to the public, the reporting parties and swap markets must provide the real-time disseminators with, at a minimum, the relevant information needed to report the data fields described in appendix A to proposed part 43. As discussed above, a real-time disseminator that is a registered SDR may require a reporting party or a swap market to report additional information to the information necessary for public dissemination. Since all swap data must be sent to a registered SDR pursuant to Section 2(a)(13)(G) of the CEA and forthcoming Commission proposals, and an SDR may be a real-time disseminator, as previously discussed, the proposed rules provide that a registered SDR that is a real-time disseminator may require additional information to match the real-time swap transaction and pricing data to data reported to the registered SDR or confirm that parties to a swap have reported in a timely manner pursuant to Section 2(a)(13)(F) of the CEA. Such additional information requested by a registered SDR may include a transaction identification code, the names of the parties to the swap, or such other information as may be necessary.

As mentioned above, proposed § 43.4(b) would require that the information in any data field listed in appendix A to proposed part 43 to be publicly disseminated by a registered SDR or swap market through a third-party service provider to the extent that such data field captures a term of the reportable swap transaction. In many cases, several data fields listed in appendix A to proposed part 43 will not be applicable to a particular reportable swap transaction. To the extent that a data field is not a term of the swap, such field need not be reported and should be left blank. Appendix A to proposed part 43 also provides specific examples of how the reporting of a particular field should look (both in form and in order) when disseminated to the public.

[55] In developing the Commission's proposal, Commission staff considered technical advice reports from CESR in the context of MiFID. In those reports, CESR concluded that market participants in the equities markets are not delivering consolidated data to the market in a standard format as a result of the "inadequate quality and consistency of the raw data itself, the inconsistencies in the way in which firms report it for publication, and the lack of any formal requirements to publish data through bodies with responsibilities for monitoring the publication process." Committee for European Securities Regulators, "CESR Technical Advice to the European Commission in the Context of the MiFID Review—Equity Markets," CESR/10–802, July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7004. See also,* "CESR Technical Advice to the European Commission in the Context of the MiFID Review and Responses to the European Commission Request for Additional Information" (CESR/10–802, CESR/10–799, CESR/10–808, CESR/10–859), July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7003.*

[56] *See id.*

Table A1 of appendix A to proposed part 43 provides that the following data fields be reported to the public in real-time.

1. *Cancellation.* This data field reports the swap transaction and pricing data that was incorrectly or erroneously reported and is therefore being canceled. Any cancellations must also contain a date stamp of the original swap, even if such date stamp was not originally reported, followed by the full swap transaction and pricing data that is being canceled (including the original time-stamp of execution). It must be made clear to the public exactly which transaction is being reported so that the public can easily disregard such swap transaction and pricing data. A cancellation does not have to be corrected; however, any corrections must first be canceled. Any such cancellation must be done in accordance with proposed § 43.3(f).

2. *Correction.* This data field reports the swap transaction and pricing data that is being reported is a correction to real-time swap transaction and pricing data that has been incorrectly publicly disseminated. Any corrections must also contain a date stamp to indicate the date of the initial swap that is being corrected, even if such date stamp was not originally reported, and the time-stamp must indicate the time of execution of the swap, not the time of the correction. Providing the date and original time-stamp of the swap will allow the public to easily replace the incorrect data. Any reportable swap transaction for which there are corrections to real-time swap transaction and pricing data must first be canceled prior to the correction, so that the public is aware of which data is being corrected. Any such correction must be done in accordance with proposed § 43.3(f).

3. *Date stamp.* This data field reports the date of execution of the swap (if not the same day or a correction). This data field need only be publicly disseminated if the swap that is being reported was executed on a day other than the current day or if the swap transaction or pricing data is a cancellation or correction to previously real-time reported swap transaction and pricing data.

4. *Execution time-stamp.* This data field reports the time of execution of the swap. The reporting party provides the execution time-stamp of the swap. The execution time-stamp is the only time-stamp that will be publicly disseminated.

5. *Cleared or uncleared.* This data field reports whether a swap is cleared through a DCO, which may affect the price of the swap. For cleared swaps, the specific DCO that clears the swap will not be listed. In consideration of protecting the identities of the parties to the swap, the Commission does not believe that the specific DCO through which a swap is cleared must be reported to the public.

6. *Indication of other price-affecting term (non-standardized swaps).* This data field reports whether there are other non-standard terms to the swap that materially affect the price of the swap. This indicator signals to market participants that there may be unreported terms of the contract that affect the price. Any reporting of bespoke swap transactions must include this indicator, since in these transactions there are other terms or factors that materially affect the price of the swap and are otherwise not included in the required fields for real-time public reporting found elsewhere in appendix A to proposed part 43.

7. *Block trades and large notional swaps.* This data field reports whether the swap is a block trade or large notional swap. This data field does not, however, make a distinction between block trades and large notional swaps, since the execution venue data field will reveal that information.

8. *Execution venue.* This data field reports where the swap was executed. The reporting party must indicate whether the swap was executed on a swap market or whether such swap is an off-facility swap. This data field assists the public in understanding the other data fields that are being reported. In consideration of protecting the identities of the parties, the Commission does not believe that the specific swap market on which the swap was executed need be publicly disseminated. Similarly, the Commission does not believe that a distinction need be made between those swaps executed on a SEF and those executed on a DCM.

9. *Swap instrument.* This data field must be reported only if a trade is a block trade or a large notional swap. Large notional swaps must refer to an existing swap instrument that is posted by a registered SDR and has an appropriate minimum block size associated with such instrument. The parties to a swap must use the appropriate minimum block size of the swap instrument when determining if a swap constitutes a large notional swap. Swap markets, in setting the minimum block trade size for a particular listed swap, must reference the appropriate minimum block size for the category of swap instrument within which the particular listed swap is included. A swap market will set a minimum block trade size for a listed swap based on the appropriate minimum block size for the relevant category of swap instrument as calculated by the SDR. Proposed § 43.5 provides rules on block trades and large notional swaps, including the determination of minimum block trade sizes. The reporting of the swap instrument data field provides market participants and the public with an understanding of the type of swap instrument for which a block trade is occurring.

The Commission believes that within each asset class there should be certain criteria that are used to determine a category of swap instrument. For example, swaps in the interest rate asset class may be considered the same swap instrument if they are denominated in the same major currency (or denominated in any non-major currency considered in the aggregate) and if they have the same general tenor.[57] With regard to tenor, the Commission believes that tenors may be grouped into ranges based on maturity date (*e.g.,* short, intermediate and long). For example, a single category of swap instrument may be "U.S. dollar interest rate swaps in a short maturity bucket, including swaps, swaptions, inflation-linked swaps, etc. and all underlying reference rates." Similarly, swaps in the "other commodity" asset class may be considered the same swap instrument if they have the same underlying asset, which generally would include all swaps whose economic terms relate to the same underlying product (*e.g.,* oil, natural gas, heating oil, gold, *etc.*). In contrast, the Commission believes that for swaps under the Commission's jurisdiction in the credit or equity asset classes all swaps within each asset class can be considered to be the same swap instrument. The swaps in the credit and equity asset class will be broad-based or on indexes and such swaps can likely be grouped together for purposes of determining the appropriate minimum block size. In the currency asset class, swap instruments may be defined by major currency pair, not by whether a major currency is one of the currencies involved in the swap.

The Commission requests comment generally about swap instruments. In addition the Commission requests comment on the following specific issues:

- What criteria for each asset class should a registered SDR consider in determining if a swap falls within a

[57] Major currencies are those of the United States, Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union. *See* § 15.03 of the Commissions regulations.

particular grouping of swap instrument? Specifically, what criteria should be used to classify a swap instrument and how do those criteria differ by asset class? What particular considerations should apply to swaps in interest rate, equity, credit, currency and other commodity classes? Who should determine the categories of swap instrument?

• How broad or narrow should the categories of swap instruments be for each asset class? Do commenters believe that the appropriate minimum block size should be determined based on particular types of swap contracts and not on categories of swap instruments? If so, why?

• Should certain asset classes have additional or fewer criteria in determining a swap instrument? If so, what asset classes and what criteria?

• Should a registered SDR apply any other criteria to the other commodity asset class to decide whether a swap falls within a particular type of swap instrument? How should the underlying asset be grouped for the other commodity asset class?

• Is it an appropriate approach to group tenors for swaps in the interest rate asset class into ranges (*e.g.,* short-term, intermediate-term and long-term)? What should be the appropriate ranges of tenor or maturity date for each of these ranges? Should there be tenor ranges for other asset classes?

• Are there any other currencies other than those described in § 15.03 of the Commissions regulations that the Commission should consider as a major currency? If so, which currencies and why?

10. *Start date.* This data field reports the day on which the contractual provisions of a swap commence or become effective. The Commission recognizes that the start date may be different than the execution date. The Commission also recognizes that the markets may develop such that swaps traded on swap markets become standardized to the point where the start date is embedded or understood by a unique product identifier. For example, the start date for a particular swap may always be the day following execution (*i.e.,* T+1), and such information could be captured by simply identifying the product through a unique product identifier. If the markets evolve in such a manner, then this data field may not be necessary to report for these swaps. Nonetheless, the start date must always be provided in a manner that is apparent to the public.

11. *Asset class.* This data field provides a general description of the asset class for a swap, as defined in proposed § 43.2(e). This data field will allow the public to easily compare swaps within an asset class and to easily identify the type of swap that is being reported. Swaps within an asset class would have broadly similar characteristics.

12. *Sub-asset class for other commodity.* This data field provides greater detail as to the type of other commodity that is being reported. The Commission realizes that there may be vast differences in the types of products that fall under a particular asset class. For this reason, a sub-asset class should be reported for other commodities so that the public can easily understand similar types of swaps. Such sub-asset classes may include, but are not limited to, specific energy, weather, precious metals, other metals, agricultural commodities, etc.

13. *Contract type.* This data field reports the specific type of swap that has been executed. This data field provides greater transparency and price discovery to market participants and the public, as knowledge of the contract type will allow the public to understand the swap transaction and pricing data that is being reported. The Commission has identified four broad categories of contracts that may be entered into: swaps, swaptions, forwards and stand-alone options. These categories may be further defined by the contract sub-type data field discussed immediately below.

14. *Contract sub-type.* This data field provides more detail on the type of contract specified in the contract type data field. The Commission envisions that there will be many contract sub-types. Such contract sub-types may include, for example, basis swaps, index swaps, broad-based security swaps and basket swaps. Specific option types and other information about options are covered by the options fields found in Table A2 to appendix A to proposed part 43.

15. *Price-forming continuation data.* This data field describes whether the information that is being reported is a price-affecting event to an existing swap. Such events may include novations, partial novations, swap unwinds and partial swap unwinds as well as other price-forming events that may occur following the execution of the swap. Such other events may also include amendments to the swap that have a specific affect on the price of the swap.

16. *Underlying asset 1 and underlying asset 2.* These data fields describe the specifics of the swap and help the public evaluate the price of the swap transaction. It is likely that each leg of a swap (*i.e.,* the fixed and the variable) will have an underlying asset that should be reported as a separate field. If there are more than two underlying assets, all underlying assets should be real-time reported and publicly disseminated. The Commission is not providing a specific format for all underlying asset fields, but the description of each underlying asset should be in a format that is commonly used by market participants. The Commission encourages reporting parties and real-time reporting disseminators to consult with one another to determine consistent ways of reporting similar underlying assets. If a standardized industry abbreviation exists for a particular underlying asset, such abbreviation should be used to describe the underlying asset. Whenever possible, alphabetical abbreviations should be used, including roman numerals; provided, however the underlying asset must be reasonably apparent to the public (*e.g.,* six-month LIBOR could be represented as VIL, 10-year Treasury could be represented as TX, etc.). Further, if a unique product identifier adequately captures the underlying asset, the underlying asset field may not need to be reported.

17. *Price notation and additional price notation.* These data fields report the price of the swap. These fields should include the total or net of any premium that is associated with a party's requirements under the swap. For example, if Party A's contractual requirements are linked to a 10-year Treasury note and Party B's requirements are linked to three-month LIBOR, the price notation should be the rate of 10-year Treasury note compared to three-month LIBOR (*e.g.,* 2.5).

The Commission recognizes that a number of different pricing conventions currently exist across swap transactions and even among market participants for similar swap transactions. Nevertheless, the Commission believes that standardizing of pricing conventions will result in greater price transparency. In order to promote such standardization, it becomes important to define what "pricing" means for swaps. Notional or principal amount is the amount on which payment rates are calculated and is not the actual amount or units exchanged in most cases. Payments under the swap are based on what the market refers to as "legs" and what the Commission refers to as "underlying assets" in this proposed rulemaking. The additional price notation would be necessary in such instances where there are multiple premiums yields, spreads or rates are characteristics of the swap. It is for this reason that the proposed rules require

the additional price notation to include, inter alia, front-end payments, back-end payments, mid-cycle flat payments, collateral and margin. All of the elements to additional price notation must be represented in this field as a single number, relative to the difference in payments between the underlying assets of the swap.

In the example above, if Party A's requirement is tied to the 10-year Treasury note yield and Party B's requirement is linked to three-month LIBOR and Party B is also required to post a back-end payment of $100,000, then the price notation would be the rate of 10-year Treasury note compared to three-month LIBOR (*e.g.,* 2.5). The additional price notation might be calculated to be +0.05, because in this example, the net present value of the back-end payment of $100,000, as applied to the exchange of payments within the swap, would be equal to +0.05. These two data fields provide the public and market participants with an easily accessible and uniform means of understanding the price at which the parties to a swap have reached an agreement regarding the swap's payment streams.

18. *Unique product identifier.* This data field, if available, describes a standardized swap. If a unique product identifier is available for a particular product, it may be reported in lieu of reporting other identifying fields including, but not limited to, the underlying asset, asset class, contract type, contract sub-type and start date, so long as such fields are adequately described and apparent to the public. The Commission believes that the markets will evolve to a point where the use of such unique product identifiers will increase transparency and promote price discovery across real-time disseminators. The Commission envisions unique product identifiers will be uniform across different swap markets.

19. *Notional currency 1 and notional currency 2.* This data field is needed if the notional or principal amounts are referenced in terms of a currency. The currency field may be reported in a commonly-accepted code. For example, U.S. dollars may be reported with the ISO 4217 currency code "USD".[58] The notional currency 1 field should refer to the notional or principal amount 1 field, while the notional currency 2 field, if applicable, should refer to the notional or principal amount 2 field. If there are more than two notional or principal amounts that require a notional currency field, then these fields should be reported in a similar manner.

20. *Notional or principal amount 1 and notional or principal amount 2.* This data field is needed to identify the size or amount of the swap transaction. The notional amount may be reported in a currency and if so, the currency must be disclosed and made easily identifiable to the public. Such disclosure can be done by reporting the notional currency field with respect to the notional amount that requires such information. If a principal amount is in units, then a currency description does not need to be reported. Appendix A to proposed part 43 contemplates the potential for two or more notional or principal amounts. When a swap has more than two notional or principal amounts, then all such amounts must be reported and made easily identifiable by reporting parties and real-time reporting disseminators. The notional or principal amount for swaps should be reported pursuant to proposed § 43.4(h) and (i). Each notional or principal amount (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, etc.), such that the number corresponds to the underlying asset for which the notional or principal amount is applicable.

21. *Payment frequency 1 and payment frequency 2.* This data field is needed to assist in understanding the price of a swap. It represents the frequency at which payments will be made for a party's contractual requirements under a swap. It is possible that the payment frequency may be the same for both parties to a swap; however, the payment frequency also may be different. If there is a difference, the payment frequencies must be reported for each requirement under the swap. The format for payment frequency should be consistent and may be reported as a numerical character followed by a letter.[59] For example, if payments are to be made every two weeks, then "2W" may be reported in this field; if payments are to be made every year, then "1Y" may be reported, etc. Each payment frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*), such that the number corresponds to the underlying asset for which the payment frequency is applicable.

22. *Reset frequency 1 and reset frequency 2.* This data field is needed to assist in understanding the price of a swap. It represents the frequency that a price for an underlying asset may be adjusted. It is possible that there is no reset frequency, that the reset frequency is the same for both underlying assets or that the reset is different for both underlying assets. If different, the reset frequencies must be reported for each underlying asset. The format for reset frequency must be consistent and may be a numerical character followed by a letter.[60] For example, if adjustments are to be made every two weeks, then "2W" may be reported in this field, if adjustments are to be made every year, then "1Y" may be reported, etc. Each reset frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*), such that the number corresponds to the underlying asset for which the reset frequency is applicable.

23. *Tenor.* This data field is needed to describe the duration of a swap and when a swap will terminate, mature or end. To protect the anonymity of the parties to a swap, the tenor field should only be reported as the month and year that the swap terminates, matures or ends. Such description may use the three character alpha-numerical format that is used in describing futures contracts.[61] For example, if a swap ends on March 15, 2020, the tenor may be reported as "H20".

Table A2 of appendix A to proposed part 43 provides the following data fields to be publicly disseminated in real-time for options, swaptions and swaps with embedded options, if applicable to a swap. If a swap has more than one embedded option or swaption provision, then all such embedded options or swaptions should be real-time reported to the public in the same manner.

1. *Embedded option on swap.* This data field is needed to describe whether the data listed in the option fields is an option that is embedded in the price of the swap. Proposed § 43.2(i) defines "embedded option" as any right, but not an obligation, provided to one party of a swap by the other party to the same swap that provides the party in possession of the option with the ability to change any one or more of the economic terms of the swap as they were previously established at confirmation (or were in effect on the start date). By requiring a separate field for embedded options on swaps, market participants and the public will be able to compare prices across the same or

[58] The International Organization for Standardization ("ISO") provides a list of currency and funds names that are represented by both a three-letter alphabetical and a three-number numerical code (the "ISO 4217" code list), which is available at: *http://www.iso.org/iso/support/currency_codes_list-1.htm.*

[59] Such period descriptions may be described as follows: daily (D), weekly (W), monthly (M) and yearly (Y).

[60] *See id.*

[61] Futures month symbols are as follows: January (F), February (G), March (H), April (J), May (K), June (M), July (N), August (Q), September (U), October (V), November (X) and December (Z).

similar swaps. The Commission believes that requiring this field will increase transparency and price discovery across the swap markets, as it will allow for the easy comparison of price by market participants and the public. Further, the Commission does not wish to see market participants wasting resources to try to avoid transparency by adding embedded options to otherwise standardized swap contracts. If the Commission did not require separate reporting of the embedded option field, it would be possible for market participants to attach worthless options to a swap in order to avoid real-time public reporting the swap in the same format as a standardized swap that does not have an embedded option.

2. *Option strike price.* This data field reports the level or price at which a party to a swap may exercise an option. The Commission recognizes that for some option types, such as collars, strangles and condors, it will be necessary to report two or more prices in this field. This data field is the first field that would be reported for options and real-time disseminators may choose to place an "O" prior to the strike price. After the "O", the level or price should follow immediately thereafter. For example, an option or swaption with a strike price of $25 should be real-time publicly reported as "O25".

3. *Option type.* This data field reports the type of option. The option type is important because it clarifies how the buying or selling of the asset is to be transacted between two parties. To promote standardization, this data field should be reported from the perspective of the party to the swap associated with underlying asset 1. The Commission recognizes that there are several different types of options, and has tried to identify some of the more common option types and their suggested two-character alphabetical descriptors in Table A2 of appendix A to proposed part 43. The Commission intends for the list of options in Table A2 to promote consistency and transparency across reporting parties and real-time disseminators. Some examples of option types include caps, collars, floors, puts, calls, pay fixed versus floating, receive fixed versus floating, straddles, strangles and knock-outs.

4. *Option family.* This data field reports the family associated with the option. The option family is important because it identifies the period of time over which an option may be executed. The Commission recognizes that there are several different types of option families, and has tried to identify some of the more common option families and provided suggested two-character alphabetical descriptors in Table A2 of appendix A to proposed part 43. The Commission intends for the list in Table A2 to promote consistency and transparency across reporting parties and real-time disseminators. Some examples of option families include American, Bermudan, European and Asian.

5. *Option currency.* This data field is needed to explain the currency for the option that is being reported. If applicable, the option currency field shall refer to both the option premium field and the option strike price.

6. *Option premium.* This data field reports the purchase price for the option at the time of execution of the swap. This number represents the total additional cost of the option as a numerical value and is broken out separately from the price notation and additional price notation fields to allow for an easier comparison of a swap with an option to similar swaps that do not include an option.

7. *Option lockout period.* This data field reports the time at which an option first can be exercised and thus, assist them in evaluating the price of an option. The option lockout date should be reported in the year and month format used in futures markets.[62] This field most often will be needed for European style options and other options where the start date for the requirements to a swap with an embedded option may be different than the date that an embedded option is available for execution. The option lockout period should be reported in the year and month format used in futures.

8. *Option expiration.* This data field reports when an option can no longer be exercised. This data field will assist the public and market participants in evaluating the price of an option. In most cases, this data field can be omitted, as a standard option would expire at the same time as the swap contract to which it is linked. The option expiration should be reported in the year and month format used in futures markets.

v. Examples To Illustrate the Public Reporting of Real-Time Swap Transaction and Pricing Data

The Commission envisions that the reporting of the data fields in appendix A to proposed part 43 may eventually be reported in the form of a consolidated ticker, particularly for the more standardized swaps that are traded on swap markets. Additionally, the Commission believes that when unique product identifiers emerge they will be publicly disseminated, increase uniformity and transparency across real-time disseminators and ultimately lead to greater transparency and price discovery. Below, the Commission has set out two examples of how real-time public reporting of swap transaction and pricing data may evolve as consolidation and standardization develops in particular asset classes and markets.

Example 1

On Friday, February 4, 2011, Bank X enters into a new plain vanilla 10-year fixed versus floating interest rate swap with Bank Y, for a notional amount of $10 million U.S. dollars. The swap is scheduled to start on Tuesday, February 8, 2011 (note: start dates are usually 2 business days later for interest rate swaps). Bank X is the payer of the fixed leg of the swap and is obligated to pay a fixed rate of 2.53% on the notional amount for the ten-year tenor of the swap. Bank Y is the payer of the floating leg of the swap and is obligated to pay the prevailing three-month LIBOR on the $10 million notional amount. The first LIBOR payment will be based upon the three-month LIBOR rate for February 4, 2011 with the rate reset on a quarterly basis going forward. This interest rate swap is plain vanilla with both banks using the same day count convention, payment currency and notional value for both of the underlying assets to the swap.

Bank X and Bank Y have no additional premiums or payments under the terms of the swap. In this example, the reset and payment frequency for the fixed-rate are semi-annual. The reset and payment frequency for the floating rate (*i.e.,* three-month LIBOR) are quarterly. The parties' requirements under the swap for both the fixed leg and floating leg are scheduled to mature on Monday, February 8, 2021. Bank X and Bank Y are both members in good standing with a SEF named "Xeqution Co." and use a DCO named "ClearitAll".

Field	Description
Execution time-stamp	16:20:47
Cleared or uncleared	C (**note:** the name of DCO is not reported)
Execution Venue	SWM (**note:** the name of SEF is not reported)
Start date	08–02–11
Asset class	IR
Contract type	S-

[62] *See id.*

Field	Description
Underlying asset 1	TX (**note:** TX represents the reference rate of Treasury 10 year, which is the fixed rate)
Underlying asset 2	IIIL (**note:** IIIL represents 3 month LIBOR, which is the floating rate)
Notional currency 1 ...	USD
Notional or principal amount 1.	10M (**note:** this may be reported as "10,000,000")
Pricing Notation	2.53
Payment frequency 1	6M
Payment frequency 2	3M
Reset frequency 1	6M
Reset frequency 2	3M
Tenor	G21 (**note:** actual day is not reported)

The Commission believes that as swaps become more standardized, market participants and real-time disseminators may develop a nomenclature that combines data fields in an easy-to-follow manner, ensuring that all the relevant information in appendix A to this proposed part 43 is publicly disseminated. For example, the swap in the above example may be displayed as follows:

16:20:47 IRS 10 TXIIIL 2.53 @0 G21.

In the illustration above, the symbol "C" is not included, because as the markets develop, the majority of standardized swaps will be cleared through DCOs and an indication of "U" would only be necessary for the reporting of uncleared swaps. The term "SWM" is also omitted since it could be assumed by market participants and the public that the swap has taken place on a swap market. Such an indication would only be needed if the swap was done off-facility pursuant to the non-financial end-user exception from the mandatory clearing requirement under Section 2(h)(7) of the CEA. The start date is not reported because in this illustration it is assumed for a swap of "TXIIIL" the start date is always two business days after the date of execution (*i.e.,* T+2). The term "IRS" would replace the separate data fields for asset class "IR" and contract type "S–" as the standard format once market participants have become accustomed to reading data on a consolidated tape for swaps. The terms "USD" and "M" in 10,000,000 are also dropped because in this illustration the market would have developed in such a manner as to understand that the standard trade is done in U.S. dollars and in round lots of one million or in this case "10". Payment frequency and reset frequency would also be excluded for both of the underlying assets because the symbol "TXIIIL" now represents a plain vanilla interest rate swap where payment frequency and reset frequency are standardized terms of the swap transaction. The number "2.53" for price notation remains but in some cases, such as a basis swap, this field may be omitted as the market develops. The symbol "@0" is used because in some cases front-end, back-end, margin, collateral or other payments that are not included in the terms of the swap must be reported as an additional price notation characteristic. In this example, there is no additional price notation that must be reported. The symbol "G21" is still reported to indicate that the swap matures (*i.e.,* terminates) in February 2016.

Example 2:

On Friday, February 4, 2011, Bank X, once again enters into a plain vanilla 10-year fixed versus floating interest rate swap with Bank Y for a notional amount of $10 million U.S. dollars. The swap is scheduled to start on Tuesday, February 8, 2011 (**Note:** start dates are usually 2 business days later). Bank X is payer of the fixed leg of the swap and is obligated to pay a fixed rate of 2.53% on the notional amount for the ten-year tenor of the swap. Bank Y is the payer of the floating leg of the swap and is obligated to pay the prevailing three-month LIBOR on the $10 million notional amount. To illustrate an exception from the plain vanilla swap, the first LIBOR payment in this example is based on the three-month LIBOR rate for February 4, 2011 with a weekly rate reset, instead of the normal quarterly rate reset. Both parties have agreed to use the same day count convention, payment currency and notional amount for both of the underlying assets to the swap.

Bank X and Bank Y have additional payments to be made between the two parties under the terms of the swap. Bank X is required to deliver a front-end payment of $500,000 U.S. dollars to Bank Y, which is represented by an increase to the fixed-rate payer's requirement of "+0.07" and reported in the additional price notation data field. For the sake of clarity, this additional price notation data field should be in the same format as the price notation field and be displayed as an addition or subtraction to the fixed-rate payer's rate under the swap.

In order for the parties to protect themselves from a possible increase in interest rates, Bank Y purchases a one-year pay fixed versus floating swaption with a strike rate of 2.53% to pay fixed for 9-years to Bank X (*i.e.,* through the maturity of the swap). This swaption effectively will terminate the original swap with Bank X, and in this example, we can assume that the cost of the swaption is $100,000. This swaption might also be listed as an adjustment to the fixed rate that Bank Y would receive from Bank X in the initial swap if the payments were not made outright, but were blended into the initial fixed rate. In this example, this might be represented by subtracting four basis points or "–0.04".

The reset and payment frequency for the fixed rate is semi-annual (every six months), while the reset and payment frequency for the three-month LIBOR is weekly, upon the request of the variable rate payer. The parties' requirements under the swap are scheduled to mature on Monday, February 8, 2021. Bank X and Bank Y are both members in good standing with a SEF named "Xeqution Co." and use a DCO named "ClearitAll".

Field	Description
Execution time-stamp	16:20:47
Cleared or uncleared	C (**note:** the name of DCO is not reported)
Execution Venue	SWM (**note:** the name of SEF is not reported)
Start date	08–02–11
Asset class	IR
Contract type	S–
Underlying asset 1	TX (**note:** TX represents Treasury 10 year)
Underlying asset 2	IIIL (**note:** IIIL represents 3 month LIBOR)
Price Notation	2.53
Additional price notation.	+0.07
Notional currency 1 ...	USD
Notional or principal amount 1.	10M (**note:** this may be reported as "10,000,000")
Payment frequency 1	6M
Payment frequency 2	1W
Reset frequency 1	6M
Reset frequency 2	1W
Tenor	G21 (**note:** actual day is not reported)
Embedded option on swap.	EMBED1
Option Strike Price	O2.53
Option Type	PF (**note:** this is always reported from the point of view of the variable leg)
Option Family	EU (**note:** this is a European style option)
Option currency	USD
Option premium	–.04 (**note:** this may be reported as "$100,000" depending on market conventions)

Field	Description
Option lockout period	G12 (**note:** actual day is not reported)
Option expiration	G21 (**note:** actual day is not reported)

The Commission believes that as swaps become more standardized, market participants or real-time disseminators may develop a nomenclature that combines data fields in an easy-to-follow manner, while ensuring that all the relevant information in appendix A to this proposed part 43 is publicly disseminated. Even swaps with one or more non-standard terms may still be reported in a consolidated format. For example, the swap in the example above may be displayed as follows:

16:20:47 IRS 10 TXIIIL S/1W 2.53 @0.07 G21 EMBED1 EU 2.53PF@–.04 LOG12

In the illustration above, the symbol "C" is not included because as the markets develop the majority of standardized swaps will be cleared through DCOs, and an indication (*e.g.,* the symbol "U") would only be necessary for the reporting of uncleared swaps. The term "SWM" is also omitted since, it could be assumed by market participants and the public that the swap has taken place on a swap market. Such indication would only be necessary if the swap was done off-facility, pursuant to the non-financial end-user exception from the mandatory clearing requirement under Section 2(h)(7) of the CEA. The start date not reported for this swap because in this illustration, it is assumed that for a swap of "TXIIIL" the start date is always two business days after the date of execution (*i.e.,* T+2). The term "IRS" would replace the separate data fields for asset class "IR" and contract type "S-" as the standard format once market participants have come accustomed reading data on a consolidated tape for swaps. The terms "USD" and "M" in 10,000,000 are also dropped because in this illustration the market has developed in such manner as to understand that the standard trade is done in U.S. dollars and in round lots of one million or in this case "10".

The Commission anticipates that in order for the price notation and additional price notation data fields to be of the greatest value to market participants and the public, some form of standardization likely will develop for the purposes of real-time public reporting and market participants consistently use these data fields.[63] An example of the evolution of standardization is shown in the illustration above where price notation is displayed as the number "2.53", which is equal to the rates associated with payments on each leg at execution. Each leg of the swap's present value of future payments would be equal to zero (*i.e.,* a par swap's value). The symbol "@0.07" is listed in the illustration above because the present value of the front-end payment is the equivalent of a higher interest payment of 0.07 over the life of the swap for the party that is paying the fixed rate at execution. Payment frequency and reset frequency have been represented with an "S/1W" for the underlying assets because the symbol "TXIIIL" represents a plain vanilla interest rate swap where payment frequency and reset frequency are standardized terms of the swap transaction. In the illustration above, however, only the Treasury leg is standard, while the floating LIBOR leg is set to weekly versus its standard quarterly format. The symbol "G21" is reported to indicate that the requirements under the swap terminate in February 2021. In this illustration, "TXIIIL" is still used as a symbol that lets participants know several of the previously required data fields are standardized and combined and therefore do not need to be displayed separately for real-time public reporting, while those fields that are non-standard are simply broken out and reported separately in a more traditional long format.

The interest rate swap in this illustration contains an embedded option that is broken out so that data fields can be easily comparable across a wider variety of similar, but not identical swaps, thus promoting post-trade price transparency. The term "EMBED1" indicates that this interest rate swap has an embedded option and the pricing information for such embedded option follows on the real-time public reporting consolidated tape. The symbol "2.53PF" replaces the separate data fields for option strike price "O2.53" and option type "PF". Option family "EU" is included in the consolidated tape to indicate the family of the embedded option. The option currency "USD" is left off of this transaction because it is assumed for a "TXIIIL" swap, the option currency for any embedded options would be "USD", unless broken out and reported individually. The symbol "LOG12" is used instead of "G12" to indicate the lock out period to provide clarity. The option expiration of "G21" is omitted because the embedded option is assumed to be in a standard form and as such would be set to expire at the same time as the swap itself. If such embedded option was not in standard form, then the option expiration field would have been reported as an additional data field.

The Commission requests comment on all aspects of the data fields in appendix A to proposed part 43 that would be required to be reported in real-time under this proposal. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed data fields that would be required to be reported in real-time? If not, what additional data fields should be reported and why? How would public dissemination of these data fields enhance transparency and price discovery?
- Which data fields, if any, should not be required to be publicly disseminated in real-time and why?
- Would public dissemination of certain data fields reduce market liquidity?[64] If so, why?
- Should the portion of the amount reported in the additional price notation data field that relates to the creditworthiness of a counterparty be extracted and reported as a separate data field? If so, why? Should the creditworthiness of a counterparty be reported in some other way?
- Do commenters agree that tenure should only be reported with month and year? Is this a useful method for protecting the anonymity of the counterparties? Does this provide an adequate level of transparency?
- Do commenters agree with the proposed method for real-time reporting and public dissemination of non-standardized swaps? Should the "indication of other price affecting term" data field contain more specificity as to what type of term is affecting the price? If so, what additional information should be included and how should it be reported?
- Would public dissemination of information concerning non-standardized swaps materially reduce market liquidity? If so, why?[65]
- Under the proposal, the swap instrument data field would only be required for block trades and large notional swaps, should this data field be reported for all swaps? If so, why?

[63] It is important to note that such standards are not intended to change the form in which market participants use to quote or construct swaps.

[64] Section 2(a)(13)(E)(iv) requires that the Commission "take into account whether the public disclosure will materially reduce market liquidity."

[65] *See* Section 2(a)(13)(E)(iv).

• Would information concerning the type of counterparties that enter into a swap enhance transparency and price discovery (*e.g.,* whether the counterparty is a swap dealer, MSP, or not)? If so, why?

• Would separately reporting embedded option information enhance price discovery and transparency? If not, why?

• Do proposed § 43.4 and appendix A to proposed part 43 provide adequate guidance with respect to the information that must be reported? If not, what additional guidance do commenters believe is necessary?

• Do commenters agree with the reporting of price-affecting continuation events? Should data relating to these events be publicly disseminated in real-time in the same way as new swap transactions? What additional types of transactions, if any, would be price-affecting continuation events that should be reported and publicly disseminated in real-time?

• What would be the costs of reporting and publicly disseminating the proposed data fields? What would be the benefits? Please provide examples, if possible.

5. Proposed Section 43.5—Block Trades and Large Notional Swaps

Sections 2(a)(13)(E)(ii) and (iii) of the CEA authorize the Commission to prescribe rules "to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts" and "to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public." As discussed in the Background Section above, while Section 2(a)(13)(E) of the CEA specifically refers to the swaps described only in Sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA (*i.e.,* clearable swaps, including swaps that are exempt from clearing), the Commission believes that it is appropriate to consider the four criteria in Section 2(a)(13)(E) of the CEA for all four categories of swaps described in Section 2(a)(13)(C) of the CEA.[66] Therefore, proposed § 43.5 establishes: (1) the procedures for determining the appropriate minimum sizes for block trades and large notional swaps; and (2) the appropriate time delays for the reporting of block trades and large notional swaps.

In developing the proposed rules with respect to block trades and large notional swaps, the Commission considered its guidance with respect to block trades in the futures markets. Additionally, the Commission considered the treatment of block trades in other markets (both foreign and domestic), such as those for equities, options and corporate bonds. Further, the Commission considered the treatment and effects of swaps with large notional or principal amounts in the current OTC swap markets. The Commission is not aware of any academic literature that offers empirical evidence to support the claim of impaired liquidity given greater transparency or how block trades on swaps or large notional swaps are affected by a post-trade transparency regime.[67]

The Commission recognizes that the term "block trade" has different meanings in different markets. For example, in the futures markets, a block trade is a permissible, privately negotiated transaction that equals or exceeds a DCM's specified minimum quantity of futures or options contracts and is executed away from the DCM's centralized market but pursuant to its rules.[68] Block trades are large-sized transactions that would cause a significant price impact if required to be executed on the DCM's centralized market. In contrast, the Commission understands, through discussions with market participants, that in the swaps markets, asset managers that execute OTC swaps and then later distribute or allocate the swap to various clients or funds may refer to such bunched transactions as block trades. To clarify the Commission's view of block trades on swaps, the proposed rules include definitions for both "block trade" and "large notional swap".[69]

i. Parties to a Block Trade or Large Notional Swap

Proposed § 43.5(b)(1) provides that any party to a block trade or large notional swap is required to be an eligible contract participant ("ECP") as that term is defined in Section 1(a)(18) of the CEA. The ECP requirement relies on Section 2(e) of the CEA, which provides that "[i]t shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5." The parties to any block trade, pursuant to a swap market's rules, and any large notional swap executed off-facility, must be ECPs. However, the proposed rule makes clear that a registered DCM may allow commodity trading advisors acting in an asset managerial capacity and investment advisors that have over $25 million in assets under management, including foreign persons performing equivalent roles, to carry out block trades on a registered DCM for non-ECP customers. Any such person may not conduct a trade on behalf of a customer unless the person receives instruction or prior consent to do so.

Proposed § 43.5(b)(2) requires that parties to a swap that is equal to or greater than the minimum block trade size must elect to be treated as a block trade and that the swap market must provide the real-time disseminator with such election. The block trade election allows parties to a swap to calculate the impact of executing the transaction bilaterally and delaying public dissemination versus executing the transaction on a swap market's trading system or platform where there would be no delay in the dissemination of the swap's transaction and pricing data. Proposed § 45.5(b)(2) also requires that the parties to a swap that qualifies as a large notional swap must elect to be treated as a large notional swap and the reporting party must provide the real-time disseminator with such election.[70]

ii. Block Trades on Swaps

Proposed § 43.2(f) and (l) define "block trade" and "large notional swap"

[66] Pursuant to the Commission's authority under Sections 2(a)(13)(B) and 2(a)(13)(E)(iii) of the CEA.

[67] The Commission will continue to analyze and study the effects of increased transparency on post-trade liquidity, particularly in the context of block trades on swaps and large notional swaps. The Commission expects that, as post-trade transparency is implemented in the context of the Dodd-Frank Act, new data will come to light that will inform the discussion and could cause subsequent revision of the proposed rules.

[68] *See, e.g.,* CME Rulebook, Rule 526 ("Block Trades"). Available at: *http://www.cmegroup.com/rulebook/CME/index.html;* ICE Futures U.S. Rulebook, Rule 4.31 ("Block Trading"). Available at: *https://www.theice.com/Rulebook.shtml?futuresUSRulebook=.*

[69] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding block trades and large notional swaps: "I would like to specifically note the treatment of 'block trades' or 'large notional' swap transactions. Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. Block trades, which are normally arranged privately, off exchange, are subject to certain minimum size requirements and time delayed reporting * * *." 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[70] By way of comparison, a party to a futures contract may elect not to treat the transaction as a block trade. By not electing to treat the transaction as a block trade, the party is choosing to place its order on the DCM's centralized market. The party who makes such an election may believe that it will receive a better price in settling its trade immediately, on the DCM's centralized market, rather than bilaterally negotiating the transaction and delaying the reporting of the trade.

as separate concepts to distinguish the difference between large notional or principal sized trades executed pursuant to a swap market's rules (block trades) and off-facility swaps that are not subject to a swap market's rules but have very large notional or principal sizes (large notional swaps). Proposed § 43.2(f) defines a block trade as a swap transaction that: (1) Involves a swap that is made available for trading or execution on a swap market; (2) occurs off the swap market's trading system or platform pursuant to the swap market's rules and procedures; (3) is consistent with the minimum block trade size requirements set forth in proposed § 43.5; and (4) is reported in accordance with the swap market's rules and procedures and subject to the appropriate time delay set forth in proposed § 43.5.[71]

Proposed § 43.5(c)(2) provides that a reporting party for any block trade must report the block trade transaction and pricing data pursuant to the rules of the swap market that makes that swap available for trading. Such reporting must occur as soon as technologically practicable after execution of the block trade and pursuant to the rules of the swap market.

Proposed § 43.5(c)(3) would require the swap market that accepts the block trade to immediately send the block trade transaction and pricing data to a real-time disseminator, which shall not publicly disseminate the swap transaction and pricing data before the expiration of the appropriate time delay described in proposed § 43.5(k) discussed below.

The Commission requests comment generally on all aspects of the proposed rules regarding block trades. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed definition of "block trade"? If not, why?
- Do commenters believe that the Commission should set a maximum time frame in which a reporting party must report a block trade to a swap market, or should such time period be defined pursuant to the rules of the respective swap markets?

iii. Large Notional Swaps

Proposed § 43.2(l) defines a large notional swap as a swap that (1) is not available for trading or execution on a swap market; (2) is consistent with the appropriate size requirements for large notional swaps set forth in proposed § 43.5; and (3) is reported in accordance with the appropriate time delay requirements set forth in proposed § 43.5. Similar to the proposed reporting requirements for block trades, the reporting party to a large notional swap must report to a real-time disseminator as soon as technologically practicable. Such large notional swaps may include: (1) Swaps that would have been subject to mandatory clearing, and for which an end-user relies on the exception from the mandatory clearing requirement in Section 2(h)(7) of the CEA;[72] or (2) other off-facility swaps that are not subject to mandatory clearing but have large notional amounts (which would include non-standardized swaps). The proposed rules provide that if a swap is sufficiently large in notional or principal amount, such swap could be considered a large notional swap and therefore may be eligible for the same time delay in real-time public reporting as block trades.

Proposed § 43.5(d) requires the registered SDR that has received the swap transaction and pricing data for a large notional swap not to publicly disseminate such data before the expiration of the appropriate time delay described in proposed § 43.5(k).

Proposed § 43.5(e) provides that an off-facility swap where neither counterparty is a swap dealer or an MSP (*e.g.,* a swap between two end-users) may be eligible to be a large notional swap. Although the parties to these swaps will not be registrants with the Commission, this provision specifies that such swaps (*i.e.,* end-user to end-user transactions) will be treated the same as swaps in which a swap dealer or MSP is a party.

The Commission requests comment generally on all aspects of the proposed rules regarding large notional swaps. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed definition of "large notional swap"? If not, why?
- Do commenters agree that off-facility swaps in which neither party is a swap dealer or an MSP be eligible to be treated as large notional swaps? If not, why?

iv. Time-Stamp and Reporting Requirements for Block Trades and Large Notional Swaps

In addition to the execution time-stamp requirement under proposed § 43.4 and appendix A to proposed part 43, proposed § 43.5(f) would require a swap market and registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time to have additional time-stamp requirements with respect to block trades and large notional swaps. Proposed § 43.5(f)(1) would require swap markets to time-stamp swap transaction and pricing data with the date and time to the nearest second (1) when such swap market receives the data from a reporting party and (2) when a swap market transmits such data to a real-time disseminator. Proposed § 45.5(f)(2) would require registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time to time-stamp such data with the date and time to the nearest second when (1) such registered SDR receives such swap transaction and pricing data from a swap market or reporting party and (2) when such data is publicly disseminated.[73] Proposed § 43.5(f)(3) would require that records of these additional time-stamps be maintained for a period of at least five years from the execution of the block trade or large notional swap. The Commission believes that requiring a swap market and a registered SDR to time-stamp these actions for block trades and/or large notional swaps is essential in providing an audit trail for block trade and large notional swap transactions from execution through public dissemination. Additionally, such time-stamps would provide the Commission ability to monitor whether reporting parties, swap markets and registered SDRs are reporting the block trades and large notional swaps in the manner described in proposed part 43.

v. Responsibilities of Registered SDRs in Determining the Appropriate Minimum Block Size

Proposed § 43.5(g) would require registered SDRs to calculate the appropriate minimum block size[74] for

[71] Both block trades and large notional swaps would only apply to new events (*i.e.,* not price affecting continuation events).

[72] As described below, swaps that rely on the exception in Section 2(h)(7) of the CEA, although large notional swaps, are subject to the same time delay as block trades.

[73] Proposed § 43.5(f) would require five distinct time-stamps for block trades and three distinct time-stamps for large notional swaps. Block trades would receive a time-stamp by: (1) The parties at execution; (2) the swap market upon receipt of the data; (3) the swap market when it sends the data to a real-time disseminator; (4) the real-time disseminator upon receipt of the data; and (5) the real-time disseminator upon public dissemination of the data. A large notional swap would receive a time-stamp: (1) The parties at execution; (2) the real-time disseminator (a registered SDR, if available) upon receipt of the data; and (3) the real-time disseminator (a registered SDR, if available) upon public dissemination of the data.

[74] Proposed § 43.2(c) defines "appropriate minimum block size" to mean the minimum notional or principal size of a swap instrument that qualifies swaps within such category of swap instrument as a block trade.

swaps for which such registered SDR receives data in accordance with Section 2(a)(13)(G) of the CEA. Such appropriate minimum block size for a swap instrument [75] shall be the greater of the resulting number derived from the "distribution test" and the "multiple test" (each described below).[76] If there is only one registered SDR for a particular asset class, the registered SDR would have to calculate the appropriate minimum block size. Since registered SDRs will be receiving data from all swaps within an asset class, they should have a more complete set of swap data and therefore the calculations will be based off of a more complete set of swap data. In the event that there are multiple registered SDRs for an asset class, and therefore, multiple registered SDRs would accept swaps for a particular category of swap instrument, the Commission will prescribe how the appropriate minimum block size should be calculated, in a way that accounts for all the relevant data.[77]

The Commission requests comment on the appropriate methods to calculate the appropriate minimum block size when more than one registered SDR accepts swap data for a particular asset class or swap instrument. In addition, the Commission requests specific comment on the following issues:

- Who should determine the appropriate minimum block size when there is more than one registered SDR that accepts swap data for a particular asset class or instrument?
- Should the Commission require registered SDRs to self-certify determinations of the appropriate minimum block size for swap instruments?

vi. Formula To Calculate the Appropriate Minimum Block Size

Section 2(a)(13)(E)(ii) of the CEA directs the Commission to determine the appropriate minimum size for large notional swaps and block trades.[78] Proposed § 43.5(g)(1) describes the procedure and calculations that a registered SDR must follow in determining the appropriate minimum block size. In determining the appropriate calculations, the Commission considered: (1) Currently existing size standards for block trades in other markets; (2) the potential impact of block trades on liquidity; and (3) the frequency of block trades in other markets, including equities, bonds and futures markets. The Commission also considered the standards used by TRACE in setting its minimum threshold for block trades.[79] In that regard, for trades with a par value exceeding $5 million for investment-grade bonds or $1 million for non-investment grade bonds (*e.g.,* high-yield and unrated debt), TRACE publicly disseminates the quantity as "5MM+" and "1MM+", respectively.[80] In developing the appropriate minimum block size formula, the Commission considered the many differences within the swaps markets, including differences in liquidity between particular markets and contracts and differences in product types between asset classes and within the same asset class.

Proposed § 43.5(g)(1) would also require a registered SDR to set the appropriate minimum block size at the greater resulting number of each of the "distribution test" and "multiple test."

vii. Distribution Test

Proposed § 43.5(g)(1)(i) describes the distribution test as applying the "minimum threshold" to the "distribution of the notional or principal transaction amounts." The proposed distribution test would require a registered SDR to create a distribution curve to see where the most and least liquidity exists based on the notional or principal transaction amounts for all swaps within a category of swap instrument.[81] The application of the distribution test requires a registered SDR to determine first the distribution of the rounded notional or principal transaction amounts of swaps (rounded pursuant to the proposed rules in § 43.4(i)) within a category of swap instrument and then calculate a notional or principal size for such swap instrument that is greater than the minimum threshold.

Proposed § 43.5(g)(1)(i)(A) would require a registered SDR to pool and perform an empirical distributional analysis on the transactional data for the swaps included in each category of swap instrument by pooling the data from such swaps for which it has data that are executed on a swap market and that are executed off-facility. Proposed § 43.5(g)(1)(i)(A) also provides that a registered SDR may consider other economic information in determining the appropriate minimum block size, in consultation with the Commission.[82] The registered SDR should: (1) identify all of the rounded notional or principal amounts traded; (2) group the transactions of a particular swap instrument based on the rounded notional or principal amounts; [83] and (3)

[75] As discussed below, proposed § 43.2(y) defines "swap instrument" to mean a grouping of swaps in the same asset class with the same or similar characteristics. Swaps in a category of swap instruments may be traded on SEFs, DCMs or off-facility. The Commission is requesting general and specific comment about the determination of swap instrument, as explained in the discussion of appendix A to part 43 above.

[76] The Commission has the authority to require registered SDRs to provide the appropriate block trade minimum size to the public under Sections 21(c)(4)(B) and 21(c)(5) of the CEA. Section 21(c)(4)(B) of the CEA states that an SDR shall provide data "in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13)." Section 21(c)(5) of the CEA states that an SDR shall "at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individual and affiliate entities."

[77] The Commission is considering alternative methods on how to determine the appropriate minimum block size when there is more than one registered SDR that accepts data for a particular asset class, including requiring a registered SDR to follow the requirements in § 40.6(a) of the CEA to self-certify the appropriate minimum block size and having the Commission make a determination of the appropriate minimum block size for a swap instrument.

[78] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding the calculation of the minimum size for block trades and large notional swaps: "The committee expects that regulators to distinguish between different types of swaps based on the commodity involved, size of the market, term of the contract and liquidity in that contract and related contracts, *i.e.;* for instance the size/dollar amount of what constitutes a block trade in 10-year interest rate swap, 2-year dollar/euro swap, 5-year CDS, 3-year gold swap, or a 1-year unleaded gasoline swap. While we expect the regulators to distinguish between particular contracts and markets, the guiding principal in setting appropriate block trade levels should be that the vast majority of swap transactions should be exposed to the public through exchange trading." 156 Cong. Rec. S5,921–22 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[79] TRACE does not use the term "block trades." Rather, the TRACE system uses the term "disseminated volume caps." In discussions between TRACE representatives and staff, TRACE informed staff that disseminated volume caps are, for all intents and purposes, substantially similar to the minimum size requirements for block trades.

[80] *See* TRACE, Trade Reporting and Compliance Engine, User Guide, Version 2.4—March 31, 2010, p. 50, *http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p116039.pdf.*

[81] For the purposes of determining the appropriate minimum block size, swaps may be grouped by asset class into a category of swap instruments. As discussed above, proposed § 43.2(y) defines swap instrument as a grouping of swaps in the same asset class with the same or similar characteristics. A registered SDR would determine a swap instrument based on different criteria per asset class. The Commission is requesting comment on the appropriate criteria to determine the categories of swap instruments for a particular asset class.

[82] The Commission anticipates that as swap markets develop, certain adjustments for seasonality, etc., may become relevant depending on the particular type of swap contract.

[83] Rounding would occur pursuant to the rounding rules for the real-time public reporting of notional or principal amounts which are illustrated in proposed § 43.4(i).

calculate the empirical distribution of all trades for the swap instrument.

Once the distribution of notional or principal transaction amounts is completed for a swap instrument, a registered SDR must then apply the minimum threshold to such distribution. Proposed § 43.5(g)(1)(i)(B) describes the "minimum threshold" as a notional or principal amount that is greater than 95% of transaction sizes in a category of swap instrument during the period of time represented by the distribution of the notional or principal transaction amounts. Setting the threshold level at 95% ensures that the resulting number from the distribution test will be large relative to the notional value of other swaps of the same type.

In determining the appropriate percentage at which to set the "minimum threshold," the Commission considered the impact of block trades in selected futures markets.[84] In the studies conducted by the Commission, the Commission found that block trades made up a small percentage of the overall markets, accounting for less than 0.075% of total trades in the three observed markets (*i.e.,* ED, CL and RB futures contracts). Recognizing that the market for swaps is not as liquid as that of futures, and recognizing market participants' needs to lay-off risk associated with block trades, the Commission is proposing a minimum threshold of greater than 95%.

viii. Multiple Test

Proposed § 43.5(g)(1)(ii) provides that to apply the multiple test to a swap instrument, a registered SDR shall multiply the "block multiple" by the "social size".[85] The multiple test is necessary since the market for a swap instrument may be illiquid and there may be very few transactions over a particular period to provide a meaningful distribution of transaction amounts.

Proposed § 43.5(g)(1)(ii)(A) provides that the social size shall be determined by: (1) Calculating the mode, median and mean transaction sizes for all swaps within a category swap instrument; and (2) choosing the greatest of the mode, median and mean transaction sizes.[86] Commission staff's research and external meetings with market participants indicated that a swap's "social size" is an important criterion in quantifying an appropriate minimum block size.[87] The social size, or customary transaction size, for a swap varies by asset class, tenor and delivery points.

Once the social size is determined, the registered SDR must then apply the block multiplier. Proposed § 43.5(g)(1)(ii)(B) provides that the block multiple shall be set at five, so therefore the registered SDR should multiply the social size by five. The resulting product will be the number that the registered SDR compares to the resulting number from the distribution test, the greater of which will be the appropriate minimum block size for such swap instrument. In determining the block multiplier, the Commission selected a number that it believed would help to ensure that the block trade size was sufficiently large relative to the trading in a particular market and would take into account those markets that have very little trading.

The Commission believes this proposed two-part test is necessary to ensure that qualifying block trades are, in fact, large trades relative to the notional or principal amounts for a swap instrument.[88] For example, suppose there is a swap instrument that has 500 trades over a one month period and all of the specific swap instruments had notional values between $50 and $60 million. Using the distribution test, the appropriate minimum block size would be somewhere close to $60 million. Using the multiple test, the appropriate minimum block size would be $275 million.[89] The $60 million

[84] The Commission examined trading data for the Eurodollar ("ED"), crude oil ("CL") and reformulated gasoline blendstock for oxygenate blending ("RB") futures contracts, among other contracts. In the ED, CL and RB studies, the relevant time period was February 2009 to September 2010 ("relevant time period"). The Commission evaluated the frequency of use and impact of block trades in these three futures markets, which represent both liquid (*e.g.,* ED) and less liquid (*e.g.,* RB) markets. In the ED futures market, the Commission looked at a total of 56,643,563 trades of which 502 trades were block trades under CME's rules, representing 0.00089% of all trades in the ED futures market during the relevant time period. The average size of an ED futures block trade during the relevant time period consisted of 2,835 contracts, and the largest ED futures block trade consisted of 21,800 contracts. In the RB futures market, the Commission looked at 10,230,939 trades of which 7,551 trades met the minimum qualifications of a block trade, representing 0.0739% of all trades in the RB futures market during the relevant time period. The average size of a RB futures block trade was 106.47 contracts and the largest RB futures block trade was 1,050 contracts. Lastly, in the CL futures market, the Commission looked at 53,796,956 trades of which 9,346 trades were block trades, representing 0.0173% of all trades during the relevant time period. The average size of a block trade in CL futures was 294.2 contracts and the largest individual trade was 5,200 contracts.

At the time of the study, the block trade minimum was 4,000 ED futures contracts (or 1,000 ED futures contracts, provided that a minimum of 1,000 contracts are transacted in years 6–10), the block trade minimum size for RB futures was 100 contracts and the block trade minimum size for RB futures was 100 contracts. *See* CME & CBOT Market Regulation Advisory Notice RA1006–3, October 19, 2010. Available at: *http://www.cmegroup.com/rulebook/files/CME_CBOT_RA1006–3.pdf. See also,* CME Rule 526 ("Block Trades"). Available at: *http://www.cmegroup.com/rulebook/CME/I/5/26.html.*

[85] Proposed § 43.2(x) defines the "social size" as the greatest of the mode, median and mean transaction sizes of a particular type of swap.

[86] The Commission also considered using one of the mode, median, or mean of a swap instrument category as the sole measurement of social size without first comparing the three to determine which is largest. However, the Commission determined such a methodology would render an incomplete understanding of a particular swap category. By itself, the mean would not represent the social size of a particular type of swap because, as the sum of the values divided by the total number of transactions, it would fail to accurately account for the influence of outliers at the extreme large end of the data set. The median, although it would take into account swap transaction outliers, would fail to accurately reflect which trade size is transacted most often. Finally, the mode, which would represent the trade size that occurs most frequently in a particular type of swap, would fail to take into account a market where trade sizes were thinly spread and where there were large gaps in data points or in swap markets without a normal distribution.

[87] *See, e.g.,* Comments from Robert Cook, Director of the Division of Trading and Markets, SEC, Yunho Song, Managing Director/Senior Trader, Bank of America Merrill Lynch and Conrad Volstad, Chief Executive Officer, ELX Futures, L.P.:

Mr. Cook: Let me ask in terms of methodology, it's been argued by some to us that there are certain markets where there's a social size of trade or fairly standardized level of trading that could be used as a part of a building block or measuring—measurement of a block trade and others where there aren't. I would just ask if, in your experience, there are generalizations that can be drawn and, if so, what product categories do you think would lend themselves most to that type of approach to the issue?

Mr. Song: Well, I'll have a go at this. It's relatively the easiest for the most liquid products say like interest rate swaps because you can get data from banks and brokers as to—like data mining. How many trades have you done? What is the maturity profile? What is the median ticket size? What ticket size will put you in the top tenth percentile? Those, I think, you would have the relatively the least amount of hurdles to derive those number scientifically. Where it gets difficult is with the products that might trade, like, once a month, because then you've got the issue with these lumpy trades, right. It could be very illiquid. Well, you may not trade for a few months. You do this gigantic trade and then you do very little trades again and then another gigantic trade. But for—again for the bulk of the OTC derivative market, for interest rate swaps and plain vanilla options, I believe that that data is relatively readily available.

Mr. Voldstad: I would think the same is true for (inaudible) credit default swaps as it is for various indices. Roundtable Tr. at 376–377.

[88] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding the calculation of the minimum size for block trades and large notional swaps: "Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. " 156 Cong. Rec. S5,921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[89] Assuming that the median ($55 million) is the largest of the mode, median and mean, the median would be multiplied by the block multiplier (five (5)) to equal $275 million.

notional size determined by the distribution test would not move the market (since the market can clearly handle that size) and would therefore not be a large notional amount relative to the other notional amounts that traded over the one month period. Therefore, in this example, the distribution test alone would not provide a good measure for the appropriate minimum block size. The proposed rules would require the registered SDR to compare the resulting number from the distribution test to resulting number from the multiple test. The greater of the two numbers would be the appropriate minimum block size for a swap instrument, which the registered SDR would post on its Internet Web site. In the example above, the result of the multiple test ($275 million) is greater than the distribution test and therefore would be the appropriate minimum block size that is posted by the registered SDR for the swap instrument.

With respect to newly-listed swaps, a registered SDR would be required to evaluate the distribution of notional or principal transaction amounts and calculate the mode, median and mean, over the one month period following the registered SDR's acceptance of the swap data pursuant to Section 2(a)(13)(G) of the CEA. Proposed § 43.5(g)(2) provides that after such one month period, the registered SDR would assign the newly-listed swap to the appropriate category of swap instrument or determine that a new category of swap instrument was necessary and would set an appropriate minimum block size. Proposed § 43.5(g)(2) also provides that registered SDRs should make an initial determination of the appropriate minimum block size [90] for a newly-listed swap one month after such newly-listed swap is first executed and reported to the registered SDR pursuant to Section 2(a)(13)(G) of the CEA. The Commission believes that one month of trading data provides a registered SDR with sufficient data to determine an appropriate minimum block size for a swap instrument.

Proposed § 43.5(g)(3) provides that registered SDRs must publish the list of the appropriate minimum block sizes in swap instruments on its Internet Web site, for which the registered SDR has received data pursuant to Section 2(a)(13)(G) of the CEA. Such appropriate minimum block size information must be available to the public in an open and non-discriminatory manner.

Proposed § 43.5(g)(4) would require that a registered SDR evaluate the distribution of notional or principal transaction amounts and calculate the mode, median and mean, on a yearly basis, initially beginning in accordance with the implementation timeframe for which the Commission is requesting public comment. The Commission recognizes that the appropriate minimum block size for a swap instrument may change due to market conditions. Such annual adjustments are in addition to the requirement to provide an appropriate minimum block size for newly-listed swaps one month after the registered SDR first receives data for such swap. Publishing the information on the same date each year (10th business day) will allow swap markets, market participants and the public certainty as to when they should check the appropriate minimum block sizes and, in the case of swap markets, adjust the minimum block trade sizes. In making its calculations, the registered SDR should look back to the data over the previous year for a category of swap instrument. If a particular swap instrument does not have a an entire year's worth of data, the proposed rules provide that the registered SDR should use the data that it has to make its determination of the appropriate minimum block size for a particular swap instrument. Proposed § 43.5(g)(4) also provides that registered SDRs shall begin to publish appropriate minimum block sizes for swap instruments in January 2012. The Commission believes that such timeframe allows the registered SDRs enough time to receive data to determine appropriate minimum block sizes for swap instruments.

The Commission considered the burden on registered SDRs and the benefit to market participants, swap markets and the public in proposing an annual update of the appropriate minimum block size. Allowing for a longer period between reviews would, presumably, bring more certainty to traders who engage in long-term investment strategies. However, such longer periods would fail to take into account the dynamic nature of swaps markets, as significant changes in swaps markets may occur in a relatively short amount of time. Therefore, previously established appropriate minimum block sizes may fail to accurately reflect the market. Conversely, shorter timeframes (*e.g.,* weekly, monthly, quarterly, etc.) were considered by the Commission, but such updates may be burdensome on registered SDRs and may create instability for market participants who engage in long-term investment strategies. The Commission believes that an annual review of the appropriate minimum block sizes is appropriate to balance these competing interests.[91]

ix. Responsibilities of Swap Markets in Determining Minimum Block Trade Sizes

Proposed § 43.5(h) provides that after an "appropriate minimum block size" is established by either a registered SDR or by a Commission prescribed method, a swap market shall set the "minimum block trade size" [92] for those swaps that it lists and wishes to allow block trading, by referring to the appropriate minimum block size that is posted on a registered SDR's Internet Web site for the swap instrument category for such swap. A swap market must set the minimum block trade size for a swap at an amount that is equal to or greater than the appropriate minimum block size listed by the appropriate registered SDR. A swap market would be responsible for ensuring that the minimum block trade sizes for swaps that it lists are consistent with the annual updates to the appropriate minimum block size for swap instruments. Additionally, a swap market would have to immediately apply any change to the minimum block size of a particular swap, following the posting of an appropriate minimum block size by a registered SDR. The swap market should follow the requirements set forth in § 40.6(a) of the Commission's regulations.[93]

Proposed § 43.5(h) provides that if a swap market wishes to set a minimum block trade size for a swap that does not have an appropriate minimum block size listed by a registered SDR, the swap market must follow the rules in proposed § 43.5(i) which discusses the procedure for setting the minimum block trade size for newly-listed swaps.

Proposed § 43.5(i) would require a swap market to set a minimum block trade size for newly-listed swap. Proposed § 43.2(n) defines a "newly-

[90] As discussed, such initial determination may be done by either grouping such newly-listed swap into an existing swap instrument category or by creating a new category of swap instrument and determining the appropriate minimum block size based on the criteria set forth in proposed § 43.5.

[91] Registered SDRs will have the relevant swap data readily available since it will be sent to them pursuant to Section 2(a)(13)(G) of the CEA, and the Commission does not anticipate that the annual review calculations required by this proposed rule will be burdensome on a registered SDR. Additionally, market participants and the public will receive the benefit of having up-to-date, appropriate minimum block sizes that accurately reflect the current market for a swap instrument.

[92] Proposed § 43.2(m) defines "minimum block trade size" as the minimum notional or principal amount, as determined by each swap market, for a block trade in a particular type of swap that is listed or executed on such swap market.

[93] The Commission recently proposed amendments to § 40.6(a) of the CEA. *See* 75 FR 67282 (November 2, 2010).

listed swap" as a swap that is listed on any swap market where an appropriate minimum block size has not been published by a registered SDR.[94] The minimum block trade size for a newly-listed swap that is set by a swap market would govern the trading of the newly-listed swaps on such swap market until such time as a registered SDR establishes an appropriate minimum block size for the newly-listed swap.

Proposed§ 43.5(i)(1) provides that if a newly-listed swap is within the parameters of an existing category of swap instrument for which a registered SDR has posted an appropriate minimum block size, the swap market shall set the minimum block trade size for such newly-listed swap at a level equal to or greater than such appropriate minimum block size. The requirement would enable a swap market to reference a currently existing appropriate minimum block size as a point of reference during the one-month interim period until the registered SDR actually puts the swap in a particular category of swap instrument and establishes an appropriate minimum block size. Proposed § 43.5(i)(2) provides that in setting the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, the swap market should consider: (i) The anticipated distribution of notional or principal transaction amounts; (ii) the social size for swaps in other markets that are in substance the same as the newly-listed swap; and (iii) the minimum block trade sizes of similar swaps in the same asset class.. After taking into account these considerations, proposed § 43.5(i)(3) provides that the swap market must ensure that the notional or principal amount selected represents a reasonable estimate of the greater of (i) a notional or principal amount that is greater than all but 95% of the total anticipated distribution of notional or principal transaction amounts over the one-month period immediately following the first execution of the swap; or (ii) five times the anticipated social size over the one-month period immediately following the first execution of the swap.

In the event that a registered SDR does not set an appropriate minimum block size for a newly-listed swap after one month, as described in proposed § 43.5(g)(2), the Commission believes that in order to comply with the proposed requirements of § 43.5(i), a swap market should continue to revise the minimum block trade size for such newly-listed swap as trading increases in order to ensure that the estimated minimum block trade size is reasonable relative to increased trading activity for such newly-listed swap. Such process should continue until an appropriate minimum block size is published for the type of swap by a registered SDR.[95]

If the same type of swap begins trading on more than one swap market during the one-month period before a registered SDR sets the appropriate minimum block size, proposed § 43.5(i) would apply to each swap market where such swap is traded. Each such swap market should set the minimum block trade size the swap listed on its facility until an appropriate minimum block size is published by a registered SDR.[96]

x. Responsibilities of the Parties to a Swap in Determining the Appropriate Minimum Large Notional Swap Size

Section 43.5(j)(1) provides the procedure for parties to a swap to determine the appropriate minimum large notional swap size.[97] Because the appropriate minimum block size for swap instruments will be available on a registered SDR's Internet Web site with respect to swaps that have been trading for one month or longer, the proposed rules provide that parties who engage in an off-facility swap, and seek to qualify their swap as a large notional swap, must refer to the appropriate minimum block sizes for swap instruments. Parties to such off-facility swap must then identify the category of swap instrument in which the swap that they wish to be considered a large notional swap would likely fall. The parties to the off-facility swap should refer to the appropriate minimum block size that is associated with the selected swap instrument, and the notional or principal amount of such swap must be equal to or greater than the appropriate minimum block size. If there is not an existing category of swap instrument with an appropriate minimum block size available to reference, then such swap between the parties shall not qualify as a large notional swap and would not be afforded any time delay in public reporting. In determining the appropriate category of existing swap instrument, the parties to a swap should consider and must document: (1) The similarities of the terms of the swap between the parties compared to the terms of swaps that are grouped within the existing category of swap instrument (*e.g.,* similarities of the fields listed in appendix A to proposed part 43); and (2) other swaps listed on swap markets that were considered in evaluating the swaps that are grouped within the existing swap instrument.

The Commission considered several factors in determining this proposed method for calculating the appropriate minimum size for large notional swaps. First, the appropriate minimum block sizes that are posted by a registered SDR should be accurate, up to date and accessible to market participants. Additionally, to the extent that the reporting party to a large notional swap is a swap dealer or MSP, such reporting parties would be subject to the Commission's proposed rules for internal business conduct standards in proposed part 23 of the Commission's regulations. Further, the swap instrument categories should be broadly defined to allow parties to a large notional swap to easily place their swap into one of the categories of swap instrument. The parties to an off-facility swap should therefore be able to accurately choose a swap instrument based on the criteria set forth in this proposed rule.

Proposed § 43.5(j)(2) provides that, to the extent that the parties to a large notional swap transaction are swap dealers and/or MSPs, such parties must maintain records that illustrate the basis for the selection of the swap instrument for the large notional swap in accordance with proposed part 23 of the Commission's regulations. This section also requires that such records be made available to the Commission upon request. This proposed recordkeeping requirement should ensure that parties to an off-facility swap do not attempt to manipulate these proposed rules.

Proposed § 43.5(j)(3) provides that if the parties to a swap are unable to determine, identify or agree on the appropriate swap instrument to

[94] A swap market may, however choose not to allow block trading for such swaps and would therefore not be required to make such determination.

[95] If the initial minimum block trade size established by a swap market is greater than or equal to the appropriate minimum block size posted on a registered SDR's Internet Web site, a swap market may not have to adjust its minimum block trade size. In such a situation, a swap market may reduce its minimum block trade size to the appropriate minimum block size.

[96] For example, if on March 1, a newly-listed swap is executed on swap market 1 and a registered SDR is available to accept the swap transaction and pricing data for the swap. If on March 15, a swap is traded on swap market 2 with the same terms as the swap traded on swap market 1. The minimum block trade size established by swap market 1 will prevail until the appropriate minimum block size is calculated and posted on the registered SDR's Internet Web site on April 1, at which time swap market 1 must ensure its minimum block trade size is greater than or equal to the appropriate minimum block size. The minimum block trade size established by swap market 2 will only be its prevailing block trade size until April 1st, when it must conform to the appropriate minimum block size as calculated by the registered SDR.

[97] As noted, proposed § 45.3(b)(2) requires the reporting party of a large notional swap to elect to treat such swap as a large notional swap.

reference for the purposes of treating such swap as a large notional swap, such swap cannot qualify as a large notional swap and therefore will not be eligible for a time delay thereby requiring that such swap transaction and pricing data be publicly disseminated in real-time.

The Commission requests comment generally on all aspects of determining the appropriate minimum size for block trades and large notional swaps. In addition, the Commission requests comment on the following issues:

- Do commenters agree with the approach of having a registered SDR calculate and publicize appropriate minimum block size, but allowing swap markets to individually set their own minimum block sizes for particular contracts at a higher level based on the appropriate minimum block size? Why or why not? If not, please provide an alternative approach.
- Is the distribution test an acceptable method of determining an appropriate minimum block size? If so, is 95% the appropriate minimum threshold?
- Is the multiple test an acceptable method of determining an appropriate minimum block size? If so, is five the appropriate block multiple?
- Do the distribution test and the multiple test, taken together, account for a situation where there is a swap instrument with an extremely small sample (*e.g.,* less than 40 transactions for a category of swap instrument)? If not, what alternative method of calculation can be added for swap instruments with a small number of transactions?
- Do commenters agree with the proposal to use the greater of the distribution test or the multiple test)? If not, what alternative approach should be used and why?
- The Commission recognizes that the two-pronged formula for determining the appropriate minimum block size may lead to a relatively small appropriate minimum block size and the possibility that a significant percentage of the overall notional or principal amount of swaps transacted in a particular category of swap instrument could be executed pursuant to block trade rules or as large notional swaps, which are subject to a delay in real-time public dissemination. Therefore, should the Commission adopt an additional standard which would limit the aggregate notional or principal amount of block trades and large notional swap transactions to a percentage of the overall notional or principal volume over the prior year? If not, why not? If so, why and what should that percentage be? Should some other test be used to address this situation?
- Do commenters agree that the appropriate minimum block sizes for swap instruments, as determined by a registered SDR, should apply to all swap markets and off-facility swaps, regardless of differences in liquidity in swap markets or off-facility? [98]
- Should there be one block trade formula for all swaps? Should there be one block trade formula for all swaps in an asset class? Should different swap instruments have different block trade formulas? If commenters believe there should be various block trade formulas for different markets, for which markets and how should those standards be defined?
- Do commenters agree with the proposed method for determining the minimum block size for large notional swaps? If not, why (please provide alternative methods)? Do commenters believe that there should be other criteria that should be considered in determining if a swap is a large notional swap? If so, what other criteria?
- If there is more than one registered SDR per asset class, how could the Commission ensure that all registered SDRs implement the same appropriate minimum block size formula for the entire market for a category of swap instrument? How should the Commission approach this issue?
- Do commenters believe that the concept of block trades should exist for newly-listed swaps? If not, why? Do commenters agree with the proposed method for determining the minimum block trade size for newly-listed swaps? If not, why?
- Do commenters believe that the registered SDRs should initially calculate the appropriate minimum block size for a swap one month after a swap has been executed on a swap market? If so, why? If not, why?
- If there is no registered SDR to accept swaps for an asset class, do commenters agree with the Commission's proposal that swap markets will determine the minimum block sizes in the manner described in proposed § 43.5(h) and (i)?
- Do commenters believe that having registered SDRs perform an annual review of all appropriate minimum block sizes is the appropriate frequency? If so, why? If not, why?
- How much data would be necessary for the initial determination by registered SDRs of appropriate minimum block trade sizes? When should such initial determination of appropriate minimum block trade sizes begin? Should there be different initial determinations times based on asset class? If so, why?
- Should registered SDRs consider data for pre-existing swaps (*i.e.,* swaps entered into prior to the effective date of the Dodd-Frank Act) in making their determinations of the appropriate minimum block sizes for swap instruments? If so, why? If not, why?
- Should registered SDRs have a requirement to consult with swap markets in calculating the appropriate minimum block size of a swap instrument? If not, should swap markets have an ability to dispute and/or appeal the calculation of the appropriate minimum block size for a swap instrument that is determined by a registered SDR?
- Should registered SDRs submit to the Commission their formulas/calculations for the appropriate minimum block sizes of swap instruments in order to ensure market transparency?

xi. Time Delay in the Real-Time Public Reporting of Block Trades and Large Notional Swaps

Section 2(a)(13)(A) of the CEA requires that all parties to swap transactions, including parties to block trades and large notional swap transactions, to report data relating to swap transactions "as soon as technologically practicable after the time at which the swap transaction has been executed." [99] However, the Dodd-Frank Act also requires the Commission to promulgate rules "to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public." [100] Additionally, the Dodd-Frank Act requires that the Commission, in writing these proposed rules, "take into account whether public disclosure will materially reduce market liquidity." [101]

The Commission recognizes the potential market impact that the reporting of a block trade or large notional swap may have on the market. Such potential market impact is critical to the determination of an appropriate time delay before public dissemination of block trade or large notional swap transaction and pricing data. The ability for market participants to trade in large

[98] *See* Section 2(a)(13)(E)(iv).

[99] Section 2(a)(13)(A) of the CEA; *see also,* Statement of Senate Agriculture Committee Chairwoman Blanche Lincoln's statement: "With respect to delays in public reporting of block trades, we expect the regulators to keep the reporting delays as short as possible." 156 Cong. Rec. S5,922 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[100] Section 2(a)(13)(E)(iii) of the CEA.

[101] Section 2(a)(13)(E)(iv) of the CEA.

notional or principal amounts without market prices moving significantly against them is a vital component of any vibrant and liquid marketplace.

In external meetings with market participants, CFTC staff was often told that increased pre-trade and post-trade transparency would enable front-running and may have an adverse impact on market liquidity. Specifically, market participants expressed concern that if they were required to publicly disseminate swap transaction and pricing data immediately after the execution of a block trade or large notional swap, other market participants would be able to profit on this information by anticipating the trading activity of the block trade or large notional swap participants who are attempting to hedge their swap portfolios. As other market participants anticipate the block trade or large notional swap parties' hedges, prices may rise adverse to the market participant who is attempting to hedge and, as a result, certain market participants may be forced to take on increased costs and market exposure in offsetting their risk. Although CFTC staff was often told of the adverse impact of post-trade transparency on market liquidity, staff is not aware of any empirical evidence to support this position.[102]

Proposed § 43.5(k)(1) provides the appropriate time delays for public dissemination of block trades and large notional swaps. The time delay for public dissemination begins at execution of the swap (*i.e.,* upon or immediately following or simultaneous with affirmation of the parties to the swap). Therefore, in the case of a block trade, the time delay would begin prior to the time that that a swap market receives the swap transaction and pricing data from a reporting party. The registered SDR that publicly disseminates such data would be responsible for ensuring that such data is disseminated in accordance with proposed § 43.5(k).

Proposed § 43.5(k)(2) requires that the time delay for block trades be no later than 15 minutes after the time of execution. After the 15 minute time delay has expired, the registered SDR or the swap market (through a third-party service provider) must immediately disseminate the swap transaction and pricing data to the public.[103] As discussed above, such delay does not apply to the reporting party's requirement to report to a swap market or to a swap party's requirement to report to a real-time disseminator. It is the responsibility of the registered SDR or the swap market (through a third-party service provider) to hold the swap data for a period of 15 minutes after the execution of the trade prior to dissemination. The 15 minute time delay would apply to all swaps in Sections 2(a)(13)(C)(i) and (iv) of the CEA, meaning that even though some swaps may be large notional swaps (*e.g.,* those subject to the non-financial end-user exception from mandatory clearing) they would be subject to the same time delay as block trades executed pursuant to the rules of a swap market. The Commission believes that since swaps in Sections 2(a)(13)(i) and (iv) of the CEA will be standardized, they should be subject to the same time delay as other standardized swaps.

In determining this proposed time delay for standardized block trades and large notional swaps, the Commission considered time delays for reporting block trades or large notional transactions in other markets. FINRA's TRACE system for corporate and agency debt securities requires that "transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within 15 minutes of the time of execution."[104] Given the 15 minute reporting delay, TRACE does not provide any additional time delay for those trades that are subject to disseminated volume caps.[105] On the other hand, in the equity securities markets the New York Stock Exchange ("NYSE") requires all trades to be reported within 30 seconds; no additional time delay is provided for block trades.[106] The London Stock Exchange ("LSE") allows the publication of the trade to be delayed, if requested, for a specified period of time which is dependent on the volume of the trade compared to the average daily turnover, as published by LSE, for that particular security.[107] In the futures markets, CME Group's rules require the seller in a block trade transaction to report to the exchange within five minutes of execution if the trade is executed during regular trading hours (as compared to the immediate reporting exchange executed transactions). After the reporting of the block trade data, the exchange "promptly publishes such information separately from the reports of transactions in the regular markets."[108] NYSE Liffe U.S., on the other hand, allows a 15 minute delay after the trade is executed to publicly report the block trade information.[109]

Proposed § 43.5(k)(3) provides that large notional swap transaction and pricing data must be reported to the public by the registered SDR that accepts and publicly disseminates such data subject to a time delay as may be

[102] *See, e.g.,* the exchange at the Roundtable between Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Director, Center for Financial Markets Carnegie Mellon University and Yunho Song, Managing Director/Senior Trader, Bank of America Merrill Lynch:

MR. SPATT: So just to follow up on that as well, in the three years that I was at the SEC, was basically coincided with the three years after much of the implementation of TRACE. And while folks from industry repeatedly came in and pressed the point that spreads were wider, they never presented to us in any format a convincing empirical study and nor am I aware of any empirical study in the academic community to show those effects. So I do think it's incumbent upon critics of post-trade disclosure to point to and identify convincing empirical evidence of these effects. And I think that's extremely important to the regulators as they go forward, but I must say, I'm not aware of that evidence right now.

MR. SONG: If I may comment on that—I think one of the distinctions we have is a market that may be [smaller] in retail based versus a market that is with [a] far small number of participant[s] and that's institutional based. So, you may not be able to, for example, find who was doing a specific trade looking at a TRACE report so it has a marginal impact on the marketplace * * *.

Roundtable Tr. at 332–333.

[103] In calculating the 15 minute time delay, the clock begins immediately upon execution of the swap transaction. Under proposed § 43.5(k), no pause in the running of the clock is permitted during the time it takes the reporting party or swap market to report the swap data to a real-time disseminator.

[104] FINRA Rule 6730 ("Transaction Reporting"). Available at: *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4402.*

[105] *See* TRACE, Trade Reporting and Compliance Engine, User Guide, Version 2.4—March 31, 2010, p. 50. Available at: *http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p116039.pdf.*

[106] The NYSE has a definition of "block trade" but such designation does not affect how such transactions are reported. *See* NYSE Rule 127.

[107] LSE rules require member firms to submit trade reports to LSE as "close to instantaneously as technically possible and that the authorized limit of three minutes should only be used in exceptional circumstances,"; however, publication of such data may be deferred. *See,* LSE Rules 3020 and 3030, effective August 2, 2010. Available at: *http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/rules-lse-2010.pdf.*

[108] *See,* CME Rule 526(F), ("The seller must ensure that each block trade is reported to the Exchange within five minutes of the time of execution; except that block trades in interest rate futures and options executed outside of Regular Trading Hours (7 a.m.–4 p.m. Central Time, Monday–Friday on regular business days) and Housing and Weather futures and options must be reported within fifteen minutes of the time of execution."). Available at: *http://www.cmegroup.com/rulebook/CME/I/5/26.html.*

[109] *See* NYSE Liffe U.S. Rule 423(d), ("Block Trades must be reported to the Exchange in a manner prescribed from time to time by the Exchange. Block Trades must be reported to the Exchange within 15 minutes after the completion of negotiations, but may not be submitted any later than 15 minutes prior to the Contract's Trading Session close time."). Available at: *http://www.nyse.com/pdfs/rulebook.pdf.*

prescribed by the Commission. The Commission believes that such time delay for large notional swaps may vary based on whether a swap's underlying asset is a financial or a physical commodity, asset class, and/or other factors. This provision covers all swaps under Sections 2(a)(13)(C)(ii) and (iii) of the CEA, which covers those swaps that are not subject to the mandatory clearing requirement. The swaps that fall under Sections 2(a)(13)(C)(ii) and (iii) of the CEA generally will be more customized and may, in some instances require, in the case of large notional swaps, different time delays than the time delays for block trades.

Proposed § 43.5(l) provides that all information in the data fields described in appendix A to this part and proposed § 43.4 shall be disseminated to the public for block trades and large notional swaps.

The Commission requests comment generally on all aspects of the proposed time delay in reporting block trade and large notional swap transaction and pricing data to the public. In addition, the Commission requests specific comment on the following issues:

- Do commenters believe that any time delay is appropriate for block trades and/or large notional swaps? If not, why? If so, why?
- Is a 15 minute time delay for publicly reporting the block trade transaction and pricing data described in the proposed rules an appropriate amount of time? If not, why? If so, why?
- Should the Commission consider different time delays for block trades that are significantly larger than the appropriate minimum block trade size? If so, why? How much larger than the appropriate minimum block trade size should the notional or principal amount be to warrant an additional time delay?
- Should the Commission consider different time delays for block trades and large notional swaps based on asset classes, swap instruments or particular contracts? If so, what factors or specific examples would warrant such longer time delays?
- How should the Commission determine an appropriate time delay for large notional swaps? The Commission believes that swaps will fall under the Commission's jurisdiction in the equity, credit, currency and interest rate asset classes (*i.e.,* financial swaps) can be distinguished from those swaps that fall in the other commodity asset class (*e.g.,* physical commodities). The Commission's presumption is that swaps in the equity, credit, currency and interest rate asset classes be subject to the same time delay as block trades (*i.e.,* 15 minutes). Do commenters agree that 15 minutes is an appropriate delay for these trades? If not, why and what would be an appropriate time delay? With regard to the time delay for large notional swaps in the other commodity asset class, the Commission recognizes a longer time delay may be necessary due to the hedging strategies that are associated with such swaps. What time delay would be appropriate for swaps in the other commodity asset class and why?
- What are the factors that should be considered in determining how long a time delay for a large notional swap should be? Which characteristics of a swap should be taken into consideration in determining the time delay for publicly disseminating swap transaction and pricing data relating to a large notional swap?
- If commenters believe that there would be an adverse price impact for traders if all information on block trades were made available in real-time, do commenters have any studies or empirical evidence to support that assertion? What would be the long-term effects on the market if all market participants knew the swap transaction and pricing details of all swaps in real-time? Would this impact liquidity? If so, how?
- Would the differences between the Commission's and the SEC's proposals for treatment of block trades, particularly regarding the time delay for public dissemination of block trade information provide for unfair treatment for any market participants? If so, how? Could the differences in the proposals regarding the time delay lead to any disruption in trading in any swaps markets? If so, how?

xii. Prohibition of Aggregation of Trades

Proposed § 43.5(m) prohibits the aggregation of orders for different trading accounts in order to satisfy the minimum block size requirement, except if done on a DCM by a commodity trading advisor acting in an asset manager capacity or an investment advisor who has $25 million in total assets under management.

III. Related Matters

A. Cost-Benefit Analysis

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA.[110] By its terms, Section 15(a) of the CEA does not require the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) of the CEA further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

2. Summary of Proposed Requirements

The proposal provides rules for the real-time public reporting of all swap transaction data, including volume and pricing data. The proposed rules mandate that reporting parties (which include swap dealers, MSPs and end-users) and swap markets (which include SEFs and DCMs), be responsible for the reporting of the swap transaction and pricing data in real-time by sending the data to an appropriate real-time disseminator. For swaps traded on a swap market, the swap market must send the data to a registered SDR or third-party service provider and such entity will publicly disseminate the swap transaction and pricing data in real-time. For off-facility swaps, the reporting party (either an MSP, swap dealer, or end-user) must send the data to a registered SDR, or if no registered SDR is available, to a third-party service provider, who will publicly disseminate the swap transaction and pricing data. The proposed rules also specify rules for how swap transaction and pricing data for trades deemed as either a block trade or large notional swap should be publicly disseminated.

3. Costs

With respect to costs, the Commission believes that the proposed reporting and recordkeeping requirements would impose significant compliance costs on registered SDRs, SEFs, DCMs, swap dealers, MSPs, end-users and third-party service providers. The proposed rules may reduce liquidity in the market by discouraging dealers from holding inventory as part of a market participant's risk management practice. Disclosing the terms of a trade

[110] *See* 7 U.S.C. 19(a).

immediately after execution exposes the price paid for a large position by a particular dealer to the rest of the market. Market participants may attempt to anticipate trading activity that the dealer will engage in to rebalance its portfolio, which may induce adverse price movements against such dealer. Additionally, real-time public reporting may obstruct some trading in illiquid instruments. Swap dealers may be less likely to commit capital in less liquid products because the terms of the trade are disclosed as soon as the trade is executed and the dealer fears his ability to lay off the risk in the market. If a trade is considered a block trade or large notional swap, the proposed rules may lead to increased costs associated with added liquidity risks, which may be passed on to end-users.

4. Benefits

With respect to benefits, the Commission believes that the proposed rules promote transparency in swaps trading which, in turn, creates greater efficiency in the swap markets.[111] Additionally, real-time reporting may expand trading opportunities as market participants have more data to analyze and research when producing investment strategies. The Commission believes that transparency in the form of real-time public dissemination of swap transaction and pricing data leads to the fairness and efficiency of markets and improves price discovery. The facilitation of price discovery decreases risk to market participants by promoting responsible and informed risk taking and, to the extent that swaps play a central role in the national economy, decreases the risk of another financial disaster by enabling market participants to measure systematic risk. The Commission believes that the federal government will be better positioned to protect the public as a result of increased surveillance and monitoring of the swap markets and its market participants. The Commission requests public comment on its cost-benefit considerations. Specifically, the Commission requests comment on whether there are alternative ways we can meet these statutory requirements under Section 727 of the Dodd-Frank Act in a less costly manner. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

B. Paperwork Reduction Act

1. Introduction

The purposes of the Paperwork Reduction Act ("PRA") are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across government.[112] The PRA applies with extraordinary breadth to all information, "regardless of form or format," a government agency is "obtaining, causing to be obtained [or] soliciting" and includes requiring "disclosure to third parties or the public, of facts or opinion," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more people." [113] This provision has been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[114]

To effect the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[115] This includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget ("OMB") for review.[116] The OMB submission process includes completing a form 83–I and a supporting statement with the agency's burden estimate and justification for the collection. When the information collection is established within a rulemaking, the agency's burden estimate and justification should be provided in the proposed rulemaking, subjecting it to the rulemaking's public comment process.

Provisions of proposed part 43 of the Commission's regulations would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulation 43—Real-Time Public Reporting," OMB control number 3038–NEW. If adopted, responses to this new collection of information would be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

2. Information Provided by Reporting Entities/Persons

As mentioned above, proposed part 43 of the Commission's regulations would result in three new collections of information requirements within the meaning of the PRA. First, proposed part 43 would create a new reporting requirement either on a "swap market" when a swap is executed on a facility, or on the parties to each swap transaction when a swap is not executed on such a facility. Second, proposed part 43 would create a public dissemination requirement on a "real-time disseminator". Third, proposed part 43 creates a recordkeeping requirement for swap markets, real-time disseminators, any reporting party.

i. Reporting Requirement

Under proposed § 43.3(a), reporting parties [117] would be required to electronically report any reportable swap transactions [118] to a real-time disseminator, except as otherwise provided in such section. Proposed § 43.3 places the duty to report on several entities or persons depending on: (1) The manner in which the transaction is executed; and (2) the parties to the swap transaction.

For those swap transactions that are executed on a swap market (*i.e.,* a DCM or SEF), proposed § 43.3 requires the swap market to publicly disseminate such swap transaction and pricing data by either sending swap transaction information to a registered SDR that accepts and publicly disseminates swap transaction and pricing data or by

[111] Under Section 727 of the Dodd-Frank Act, Congress has mandated that swap transaction and pricing data be real-time reported and publicly disseminated. The Commission has requested comments on ways we can meet these statutory requirements in a less costly manner.

[112] *See* 44 U.S.C. 3501.

[113] 44 U.S.C. 3502.

[114] *See* 5 CFR 1320.3(c)(1).

[115] *See* 44 U.S.C. 3506.

[116] *See* 44 U.S.C. 3507.

[117] Proposed § 43.2(w) defines "reporting party" to include the party to a swap with the duty to report a reportable swap transaction.

[118] Proposed § 43.2(v) defines "reportable swap transaction" to mean any executed swap, notation, swap unwind, partial novation, partial swap unwind or any other post-execution event that affects the pricing of a swap.

sending swap transaction information through a third-party service provider for public dissemination. The Commission estimates that DCMs and SEFs (an estimated 57 entities or persons) will have approximately 2,080 burdens hours per swap market.[119]

For those swap transactions that are executed "off-facility", proposed § 43.3 requires reporting parties (*i.e.,* swap dealers, MSPs and swap end-users) to report their swap transaction and pricing data to a registered SDR or, if no registered SDR will accept such data, to a third-party service provider. With respect to swap dealers and MSPs (an estimated 300 entities or persons), proposed § 43.3 requires only one party to such transaction report to a real-time disseminator. The Commission estimates that swap dealers and MSPs will have 2,080 annual burden hours associated with the reporting requirement under proposed § 43.3. With respect to swap end-users, proposed § 43.3 requires swap end-users to report their swap transaction and pricing data only for end-user-to-end-user transactions. In addition, proposed § 43.3 provides that only one swap end-user in an end-user-to-end-user swap transaction will have the obligation to report to a real-time disseminator. For that reason, the Commission estimates that the total number of swap end-users that would be required to report their swap transaction and pricing data is 1,500 entities or persons.[120] The Commission estimates that swap end-users will have four (4) annual burden hours per reporting party or person, for a total of 6,000 aggregate annual burden hours.[121]

Based on the foregoing, the Commission has determined the estimated aggregate annual burden hours on swap markets and with respect to off-facility swap transactions to be 748,560.

ii. Public Dissemination Requirement

Proposed § 43.3 requires a registered SDR to publish through an electronic medium swap transaction and pricing data received from reporting parties as soon as technologically practicable, except when the registered SDR is required to delay the publication of information relating to large notional swaps or block trades. The Commission estimates that there will be approximately 15 registered SDRs[122] Proposed § 43.3(h) requires registered SDRs to receive and publicly disseminate real-time swap transaction and pricing data at all times, 24-hours a day. The Commission anticipates that there will be 6,900 annual burden hours per registered SDR. Based on the foregoing, the Commission has determined the estimated aggregate annual burden hours to be 103,500 for all registered SDRs.[123] Therefore, the total aggregate annual burden hours associated with this public dissemination requirement, including the burden hours associated with third party service providers, is estimated to be 207,000.

iii. Recordkeeping Requirement

Under proposed § 43.3(i), swap markets (an estimated 57 entities or persons), registered SDRs (an estimated 15 entities or persons) and reporting parties must retain all data relating to a reportable swap transaction for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated in real-time. With respect to swap markets and real-time disseminators, the Commission estimates that proposed recordkeeping requirement will be 250 annual burden hours per swap market and registered SDR.[124] As referenced above, the Commission anticipates that 1,500 swap end-users will be reporting parties for the purposes of this part of the Commission's regulations. Since the Commission anticipates that there will be lower levels of activity relating to the requirement for swap end-users, the Commission estimates that there will be two (2) annual burden hours per swap end-user. It is important to note that the Commission addresses the recordkeeping requirements of swap dealers and MSPs in a separate, but related rulemaking relating to the internal business conduct standards of these entities as part of the Commission's overall rulemaking initiative implementing the Dodd-Frank Act.[125]

Based on the foregoing, the Commission estimates that the aggregate annual burden hours associated with the recordkeeping requirement under the proposed § 43.3 will be 39,250.

iv. Determination of Appropriate Minimum Block Size

Under proposed § 43.5(g), registered SDRs (an estimated 15 entities or persons) will be required to determine the appropriate minimum block size for swaps for which these registered SDRs receive data in accordance with Section 2(a)(13)(G) of the CEA. A registered SDR shall set and publish annually the appropriate minimum block size for each swap instrument as the greater of the numbers derived from two formulas: A distribution test and a multiple test as described in the proposal. Additionally, under proposed § 43.5(i), the SDR shall set the appropriate minimum block size for newly-listed swaps one month after the registered SDR receives data in accordance with Section 2(a)(13)(G). The registered SDR may set the appropriate minimum block size for newly-listed swaps by placing them in

[119] Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

[120] The Commission requests comment on the number of swap end-users that would be required to report their swap transaction and pricing data pursuant to proposed § 43.3. The Commission estimates that there will be a total of 30,000 swap market participants and that 1,500 of those participants will engage in end-user-to-end-user swap transactions (5% of 30,000) requiring at least one of those participants to report such swap transaction and pricing data.

[121] Estimated burden hours were obtained in consultation with the Commission's experts on information technology. This estimate includes the expectation that end users who participate in end-user-to-end-user swaps will contract with other entities to report the swap transaction and pricing data to a registered SDR or third party service provider. The Commission requests comment on these estimates.

[122] Because the Commission has not regulated the swap market, the Commission was unable to collect data relevant to these estimates. For that reason, the Commission requests comment on these estimates.

[123] The Commission estimates that there will be 15 third-party service providers. These third-party service providers are anticipated to have the same public dissemination and recordkeeping burden hours as those estimated for registered SDRs. Proposed § 43.3(d) would require a swap market that chooses to publicly disseminate swap transaction and pricing data in real-time through a third-party service provider to (1) ensure that any such third-party service provider that publicly disseminates the swap market's swap transaction and pricing data in real-time does so in a manner that complies with those standards for registered swap data repositories described in this part; and (2) ensure that the Commission has access to any such swap transaction and pricing data, through either the swap market or via direct access to the third-party service provider. Additionally, certain off-facility swaps may be publicly disseminated through a third-party service provider in those instances where no registered SDR is available to accept and publish the swap transaction and pricing data. Therefore, although the ultimate responsibility is on the swap market who uses a third-party service provider to ensure it complies with standards set forth in part 43 for registered SDRs, the third-party service provider will be the entity actually performing the public dissemination and, in some cases, recordkeeping function for certain swaps. Therefore, as was estimated for registered SDRs, the Commission estimates a public dissemination burden of 6,900 hours per third-party service provider, for an aggregate of 103,500 annual burden hours for all third-party service providers. Also, the Commission estimates a recordkeeping burden of 250 hours per third-party service provider, for an aggregate of 3,750 annual burden hours for all third-party service providers.

[124] *See* footnote 123 above.

[125] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements related to swap dealers and MSPs would result from the rules proposed herein.

a category of existing swap instrument with an appropriate minimum block size or by creating a new category of swap instrument and performing the calculations described in § 43.5(g). The Commission estimates that proposed requirement will impose 20 annual burden hours per registered SDR.

Based on the foregoing, the Commission estimates that the aggregate annual burden hours associated with this requirement under the proposed § 43.5(g) and (i) will be 300.

3. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the Federal Register. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") was adopted to address the concerns that government regulations may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires agencies to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[126] These analyses must describe the impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; an estimate of the number of small entities to be affected; identification of federal rules that may duplicate, overlap, or conflict with the proposed rules; and a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small entities.[127]

Proposed part 43 shall affect real-time disseminators (*i.e.,* registered SDRs and third-party service providers), SEFs, DCMs, swap dealers, MSPs and swap end-users that transact with other swap end-users. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[128] In its previous determinations, the Commission has concluded that DCMs are not small entities for the purpose of the RFA.[129]

As registered SDRs and SEFs are new entities to be regulated by the Commission pursuant to the Dodd-Frank Act, the Commission previously has not determined whether these entities are "small entities" for the purpose of the RFA. The Commission is proposing to determine that registered SDRs and SEF covered by these proposed regulations, for reasons similar to those applicable to DCMs, are not small entities for purposes of the RFA. Specifically, the Commission proposes that registered SDRs and SEFs should not be considered small entities based on, among other things, the central role they will play in the national regulatory scheme overseeing the trading of swaps. Because they will be required to accept swaps across asset classes, registered SDRs will require significant resources to operate. With respect to SEFs, not only will SEFs play a vital role in the national economy, but they will be required to operate a self-regulatory organization, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Most of these entities will not be small entities for the purposes of the RFA.

With respect to swap dealers, the Commission previously has determined that futures commission merchants ("FCMs") should not be considered to be small entities for the purposes of the RFA.[130] Like FCMs, swap dealers will be subject to minimum capital and margin requirements, and are excepted to comprise the largest global financial firm. Additionally, the Commission is required to exempt from designation entities that engage in a de minimis level of swaps.[131]

Similarly, with respect to swap dealers and MSPs, the Commission has previously determined that large traders are not "small entities" for RFA purposes. Like large traders, swap dealers and MSPs will maintain substantial positions, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

Although the regulations will require reporting from a single end-user transacting in a swap with another end-user, in all other situations (such as when an end-user engages in a swap with a swap or MSP), the reporting requirement will be borne by the swap dealer or MSP. Additionally, most end-users regulated by the Employee Retirement Income Security Act of 1974 ("ERISA") [132] such as pension funds, which are among the most active end-users in the swap market, are prohibited from transacting directly with other ERISA-regulated end-users. The Commission does not believe that the reporting requirements under this rulemaking will create a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, will not have a significant impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

List of Subjects in 17 CFR Part 43

Real-time public reporting; block trades; large notional swaps; reporting and recordkeeping requirements.

[126] *See* 5 U.S.C. 601 *et seq.*

[127] *See* 5 U.S.C. 603, 604.

[128] *See* 5 U.S.C. 601 *et seq.*

[129] *See* 47 FR 18618 (Apr. 30, 1982).

[130] *See* 47 FR 18618 (Apr. 30, 1982).

[131] *See id.* at 18619.

[132] *See* 29 U.S.C. 1106.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular Section 2(a)(13) of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulation by adding part 43 as follows:

PART 43—REAL-TIME PUBLIC REPORTING

Sec.
43.1 Purpose, scope, and rules of construction.
43.2 Definitions.
43.3 Method and timing for real-time public reporting.
43.4 Swap transaction and pricing data to be publicly disseminated in real-time.
43.5 Block trades and large notional swaps for particular markets and contracts.

Appendix A to Part 43—Data Fields for Real-Time Public Reporting

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, *amended by* Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 43.1 Purpose, scope and rules of construction.

(a) *Purpose.* This part sets forth rules relating to the collection and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery.

(b) *Scope.* (1) The provisions of this part shall apply to all swaps as defined in Section 1a(47) of the Act and any implementing regulations therefrom, including:

(i) Swaps subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act (including those swaps that are excepted from the requirement pursuant to Section 2(h)(7) of the Act);

(ii) Swaps that are not subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, but are cleared at a registered derivatives clearing organization;

(iii) Swaps that are not cleared at a registered derivatives clearing organization and are reported to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time; and

(iv) Swaps that are required to be cleared under Section 2(h)(2) of the Act, but are not cleared.

(2) This part applies to all swap execution facilities, designated contract markets, swap data repositories, as well as parties to a swap including registered or exempt swap dealers, registered or exempt major swap participants and U.S.-based end-users.

(c) *Rules of Construction.* The examples in this part and in appendix A to this part 43 are not exclusive. Compliance with a particular example or application of a sample clause, to the extent applicable, constitutes compliance with such portion of the rule to which the example relates.

§ 43.2. Definitions.

As used in this part:

(a) *Act* means the Commodity Exchange Act, as amended.

(b) *Affirmation* means the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute "execution" of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap.

(c) *Appropriate minimum block size* means the minimum notional or principal size of a swap instrument that qualifies swaps within such category of swap instrument as a block trade. The appropriate minimum block size is calculated by a registered swap data repository or is prescribed by the Commission.

(d) *As soon as technologically practicable* means as soon as possible, taking into consideration the prevalence, implementation and use of technology by comparable market participants.

(e) *Asset class* means the broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity and such other asset classes as may be determined by the Commission.

(f) *Block trade* means a swap transaction that:

(1) Involves a swap that is made available for trading or execution on a swap market;

(2) Occurs off the swap market's trading system or platform pursuant to the swap market's rules and procedures;

(3) Is consistent with the minimum block trade size requirements set forth in § 43.5; and

(4) Is reported in accordance with the swap market's rules and procedures and the appropriate time delay set forth in § 43.5(k).

(g) *Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

(h) *Confirmation by affirmation.* The process by which one party to a swap acknowledges its assent to the complete swap terms submitted by the other party to the swap. If the parties to a swap are using a confirmation service vendor, complete swap terms may be submitted electronically by a party to such vendor's platform and the other party may affirm such terms on such platform. With the affirmation by one party to the complete swap terms submitted by the other party, the swap is legally confirmed and a legally binding confirmation is consummated (*i.e.,* "confirmation by affirmation").

(i) *Embedded option* means any right, but not an obligation, provided to one party of a swap by the other party to the same swap that provides the party in possession of the option with the ability to change any one or more of the economic terms of the swap as they were previously established at confirmation (or were in effect on the start date).

(j) *Executed* means the completion of the execution process.

(k) *Execution* means an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Execution occurs immediately following or simultaneous with the affirmation of the swap.

(l) *Large notional swap* means a swap transaction that:

(1) Involves a swap that is not available for trading or execution on a swap market;

(2) Is consistent with the appropriate size requirements for large notional swaps set forth in § 43.5; and

(3) Is reported in accordance with the appropriate time delay requirements set forth in § 43.5(k).

(m) *Minimum block trade size* means the minimum notional or principal amount, as determined by each swap market, for a block trade in a particular type of swap that is listed or executed on such swap market. The minimum block trade size shall be equal to or greater than the appropriate minimum block size.

(n) *Newly-listed swap* means a swap that is listed on any swap market where an appropriate minimum block size has not been published by a registered swap data repository pursuant to § 43.5.

(o) *Novation* means the process by which a party to a swap transfers all of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap. The transferee accepts all

of the transferor's rights, liabilities, duties and obligations under the swap. A novation is valid so long as the transferor and remaining party to the swap are given notice, and the transferor, transferee and remaining party to the swap consent to the transfer.

(p) *Off-facility swap* means any reportable swap transaction that is not executed on or subject to the rules of a swap market.

(q) *Other commodity* means any commodity that cannot be grouped in the credit, currency, equity or interest rate asset class categories.

(r) *Public dissemination and publicly disseminate* means to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format.

(s) *Real-time disseminator* means a registered swap data repository or third-party service provider that accepts swap transaction and pricing data from multiple data sources and publicly disseminates such data in real-time pursuant to this part.

(t) *Real-time public reporting* means the reporting of data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

(u) *Remaining party* means a party to a swap that consents to a transferor's transfer by novation of all of the transferor's rights, liabilities, duties and obligations under such swap to a transferee.

(v) *Reportable swap transaction* means any executed swap, novation, swap unwind, partial novation or partial swap unwind, or such post-execution events that affect the pricing of a swap.

(w) *Reporting party* means the party to a swap with the duty to report a reportable swap transaction in accordance with this part and Section 2(a)(13)(F) of the Act.

(x) *Social size* means the greatest of the mode, median and mean transaction sizes of a particular swap contract or swap instrument, as commonly observed in the marketplace.

(y) *Swap instrument* means a grouping of swaps in the same asset class with the same or similar characteristics.

(z) *Swap market* means any registered swap execution facility or registered designated contract market that makes swaps available for trading.

(aa) *Swap unwind* means the termination and liquidation of a swap, typically followed by a cash settlement between the parties to such swap.

(bb) *Third-party service provider* means an entity, other than a registered swap data repository, that publicly disseminates swap transaction and pricing data in real-time on behalf of a swap market or, in the case of an off-facility swap where there is no registered swap data repository available to publicly disseminate the swap transaction and pricing data in real-time, on behalf of a reporting party.

(cc) *Transferee* means a party to a swap that accepts, by way of novation, all of a transferor's rights, liabilities, duties and obligations under such swap with respect to a remaining party.

(dd) *Transferor* means a party to a swap that transfers, by way of novation, all of its rights, liabilities, duties and obligations under such swap, with respect to a remaining party, to a transferee.

(ee) *Unique product identifier* means a unique identification of a particular level of the taxonomy of the asset class or sub-asset class in question, as further described in § 43.4(f) and § 45.4(c) of this chapter. Such unique product identifier may combine the information from one or more of the data fields described in appendix A to this part 43.

(ff) *U.S. person* means any U.S.-based swap dealer, major swap participant, eligible contract participant, end-user or other U.S.-based entity or person that transacts in a swap.

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time.* (1) *In general.* A reporting party shall report any reportable swap transaction to a real-time disseminator as soon as technologically practicable.

(2) Swaps listed or executed on a swap market. (i) For swaps executed on a swap market's trading system or platform, a reporting party shall satisfy its reporting requirement under this section by executing such reportable swap transaction on the swap market.

(ii) For block trades executed pursuant to the rules of a swap market, the reporting party shall satisfy its reporting requirement by reporting such trades to the swap market in accordance with the rules of the swap market and § 43.5.

(3) Off-facility swaps. Except as otherwise provided in § 43.5, all off-facility swaps shall be reported as soon as technologically practicable following execution, by the reporting party, to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in accordance with the rules set forth in this part. The following persons shall be reporting parties for off-facility swaps:

(i) If only one party is a swap dealer or major swap participant, the swap dealer or major swap participant shall be the reporting party.

(ii) If one party is a swap dealer and the other party is a major swap participant, the swap dealer shall be the reporting party.

(iii) If both parties are swap dealers, the swap dealers shall designate which party shall be the reporting party.

(iv) If both parties are major swap participants, the major swap participants shall designate which party shall be the reporting party.

(v) If neither party is a swap dealer nor a major swap participant, the parties shall designate which party (or its agent) shall be the reporting party.

(4) Special rules when no registered swap data repository will accept and publicly disseminate data. If no registered swap data repository is available to accept and publicly disseminate swap transaction and pricing data, the reporting party of an off-facility swap may satisfy the real-time public reporting requirement under this part by publicly disseminating such data through a third-party service provider in the same manner that a swap market may report through a third-party service provider.

(b) *Public dissemination of swap transaction and pricing data. (1) Reportable swap transactions executed on a swap market.* (i) A swap market shall publicly disseminate all swap transaction and pricing data for swaps executed thereon, as soon as technologically practicable after the swap has been executed. A swap market shall satisfy this public dissemination requirement by either sending or otherwise electronically transmitting swap transaction information to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data or by publicly disseminating swap transaction information through a third-party service provider for public dissemination.

(ii) A swap market that sends swap transaction information to a third-party service provider to publicly disseminate such data in real-time does not satisfy its requirements under this section until such data is publicly disseminated pursuant to this part.

(2) *Prohibition of disclosure of data prior to sending data to a real-time disseminator.*

(i) No swap market or reporting party shall disclose swap transaction and pricing data prior to the public

dissemination of such data by a real-time disseminator.

(ii) Notwithstanding the disclosure prohibition of § 43.5(b)(2)(i), a swap market may disclose swap transaction and pricing data available to participants on its market prior to the public dissemination of such data, provided that such disclosure is made no earlier than the disclosure of such data to a real-time disseminator for public dissemination.

(iii) Notwithstanding the disclosure prohibition of § 43.5(b)(2)(i), a swap dealer may disclose swap transaction and pricing data for off-facility swaps available to its customer base prior to the public dissemination of such data, provided that such disclosure is made no earlier than the disclosure of such data to a registered swap data repository that accepts swap transaction and pricing data for public dissemination.

(c) *Requirements for registered swap data repositories in providing the real-time public dissemination of swap transaction and pricing data.* (1) *Compliance with part 49 of this chapter.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter and shall publicly disseminate swap transaction and pricing data as soon as technologically practicable upon receipt of such data, unless the data is subject to a time delay in accordance with § 43.5.

(2) *Acceptance of all swaps in an asset class.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all swaps within such asset class.

(3) *Annual independent review.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the registered swap data repository's security and other system controls for the purposes of ensuring compliance with the requirements in this part.

(d) *Requirements if a swap market publicly disseminates through a third-party service provider.* If a swap market chooses to publicly disseminate swap transaction and pricing data in real-time through a third-party service provider, such swap market shall —

(1) Ensure that any such third-party service provider that publicly disseminates the swap market's swap transaction and pricing data in real-time does so in a manner that complies with those standards for registered swap data repositories described in this part.

(2) Ensure that the Commission has access to any such swap transaction and pricing data, through either the swap market or via direct access to the third-party service provider.

(e) *Availability of swap transaction and pricing data to the public.* Registered swap data repositories shall publicly disseminate swap transaction and pricing data in such a format that may be downloaded, saved and/or analyzed.

(f) *Errors or omissions.* (1) *In general.* Any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled in the following manner:

(i) If a party to the swap that is not the reporting party becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the reporting party of the correction.

(ii) If the reporting party to a swap becomes aware of an error or omission in the swap transaction and pricing data which it reported to a swap market or real-time disseminator with respect to such swap, either through its own initiative or through notice by the other party to the swap, the reporting party shall promptly submit corrected data to the same swap market or real-time disseminator.

(iii) If the swap market becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, or receives notification from the reporting party, the swap market shall promptly submit corrected data to the same real-time disseminator.

(iv) Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate any cancellations or corrections to such data, as soon as technologically practicable after receipt or discovery of any such cancellation or correction.

(2) *Improper cancellation or correction.* Reporting parties, swap markets and registered swap data repositories that accept and publicly disseminate swap transaction and pricing data in real-time shall not submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in publication or to otherwise evade the reporting requirements in this part.

(3) *Cancellation.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall cancel any incorrect data that had been publicly disseminated, by publicly disseminating a cancellation of such data, in the manner and format described in Appendix A to this part.

(4) *Correction.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall correct any incorrect data that had been publicly disseminated to the public, by publicly disseminating a cancellation of the incorrect swap transaction and pricing data and then publicly disseminating the correct data, as soon as technologically practicable, in the manner and format described in Appendix A to this part.

(g) *Hours of operation.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time:

(1) Shall maintain hours of operation to receive and publicly disseminate swap transaction and pricing data at all times, twenty-four hours a day;

(2) May declare, on an ad hoc basis, special closing hours to perform system maintenance and shall provide reasonable advance notice of its special closing hours to market participants and to the public; and

(3) Shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours when, in its estimation, the U.S. market and major foreign markets are most active.

(h) *Acceptance of data during special closing hours.* During special closing hours, a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the capability to receive and hold in queue information regarding reportable swap transactions pursuant to this part.

(i) *Recordkeeping.* All data related to a reportable swap transaction shall be maintained for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated pursuant to this part.

(1) *Retention of data by a swap market.* Any swap market and any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall retain all swap transaction information that is received from reporting parties for public dissemination, including data related to block trades and large notional swaps and information that is received by a swap market or by a registered swap

data repository that accepts and publicly disseminates swap transaction and pricing data in real-time but is not publicly reported pursuant to § 43.4(c).

(2) *Retention of data by a swap dealer or major swap participant.* In accordance with this part and part 23 of this chapter, a swap dealer or major swap participant shall retain all data relating to a reportable swap transaction that such swap dealer or major swap participant sends to a swap market or a registered swap data repository that accepts and publicly disseminates such data in real-time or that such swap dealer or major swap participant retains in accordance with § 43.5.

(j) *Fees.* Any fees or charges assessed on a reporting party or swap market by a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data must be equitable and non-discriminatory. If such registered swap data repository allows a discount based on the volume of data reported to it for public dissemination, such discount shall be provided to all reporting parties and swap markets impartially.

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

(a) *In general.* Swap transaction information shall be reported to a real-time disseminator so that the real-time disseminator can publicly disseminate swap transaction and pricing data in real-time in accordance with this part, including the manner and format requirements described in appendix A to this part 43 and this section.

(b) *Public dissemination of data fields.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information in the data fields described in appendix A to this part.

(c) *Additional swap information.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting parties and swap markets to report to such registered swap data repository, such information that is necessary to match the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional information shall not be publicly disseminated by the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time on a transactional or aggregate basis.

(d) *Amendments to data fields.* The Commission may determine from time to time to amend the data fields described in appendix A to this part.

(e) *Anonymity of the parties to a swap transaction. (1) In general.* Swap transaction and pricing data that is publicly disseminated in real-time may not disclose the identities of the parties to the swap. A registered swap data repository that accepts and publicly disseminates such data in real-time may not do so in a manner that discloses or otherwise facilitates the identification of a party to a swap.

(2) *Use of general description.* Reporting parties and swap markets shall provide a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time with a specific description of the underlying asset(s) and tenor of the swap; this description must be general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap. This requirement is separate from the requirement that a reporting party must report swap data to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act. If a swap dealer or major swap participant does not report the exact description of the underlying asset(s) or tenor for the purposes of real-time reporting pursuant to this part, because such exact description would facilitate the identity of a party to a swap, such swap dealer or major swap participant must comply with the related documentation and recordkeeping requirements described in Part 23 of this chapter.

(f) *Unique product identifier.* If a unique product identifier is developed that sufficiently describes one or more swap transaction and pricing data fields for real-time reporting described in appendix A to this part, then such unique product identifier may be used in lieu of the data fields that it describes.

(g) *Price forming continuation data.* Any swap-specific event including, but not limited to novations, swap unwinds, partial novations, and partial swap unwinds, that occurs during the life of a swap and affects the price of such swap shall be publicly disseminated pursuant to this part.

(h) *Reporting of notional or principal amount. (1) Off-facility swaps.* The actual notional or principal amount for any off-facility swap shall be reported by the reporting party to the registered swap data repository that accepts and publicly disseminates such data in real-time.

(2) *Swaps executed on or pursuant to the rules of a swap market.* The actual notional or principal amount for any block trade executed pursuant to the rules of a swap market shall be reported by the reporting party to the swap market. A swap market shall transmit the actual notional amount for all swaps executed on or pursuant to its rules to the real-time disseminator.

(i) *Public dissemination of notional or principal amount.* The notional or principal amount data fields described in Appendix A to this Part 43 shall be publicly disseminated as follows:

(1) If the notional or principal amount is less than 1 million, round to nearest 100 thousand;

(2) If the notional or principal amount is less than 50 million but greater than 1 million, round to the nearest million;

(3) If the notional or principal amount is less than 100 million but greater than 50 million, round to the nearest 5 million;

(4) If the notional or principal amount is less than 250 million but greater than 100 million, round to the nearest 10 million;

(5) If the notional or principal amount is greater than 250 million, round to "250+".

§ 43.5 Block trades and large notional swaps for particular markets and contracts.

(a) *In general.* The provisions in this § 43.5 shall apply to both block trades on swaps and large notional swaps.

(b) *Eligible block trade or large notional swap parties. (1) In general.* Parties to a block trade or large notional swap must be "eligible contract participants" as defined in Section 1a(18) of the Act. However, a designated contract market may allow a commodity trading advisor acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants, if such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management. A person transacting a block trade on behalf of a customer must receive written instruction or prior consent from the customer to do so.

(2) Election to be treated as a block trade or large notional swap. Parties to a swap of a large notional value shall elect to have the swap treated as a block

trade or large notional swap. Any reporting party or swap market shall indicate such election to a real-time disseminator.

(c) *Block trades on swaps.* (1) A swap market that permits block trades must have rules that specify the minimum size of such block trades pursuant to this section.

(2) The reporting party of a block trade shall report the block trade transaction and pricing data to the swap market, as soon as technologically practicable after execution of the block trade and pursuant to the rules of such swap market.

(3) The swap market shall transmit block trade transaction and pricing data to a real-time disseminator as soon as technologically practicable after receipt of such data. Such information shall not be publicly disseminated until the expiration of the appropriate time delay described in § 43.5(k).

(d) *Large notional swaps.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall not publicly report the large notional swap transaction and pricing data until the expiration of the appropriate time delay described in § 43.5(k). Immediately upon expiration of the appropriate time delay, the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time must publicly disseminate the large notional swap transaction and pricing data.

(e) *Off-facility swaps in which neither counterparty is a swap dealer or a major swap participant.* Off-facility swaps in which neither counterparty is a swap dealer or a major swap participant may qualify as large notional swaps. Parties to such transactions shall follow the requirements for large notional swaps in § 43.5.

(f) *Time-stamp and reporting requirements for block trades and large notional swaps.* In addition to the requirements under § 43.4 and appendix A to this part, a swap market and a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the following additional time-stamp requirements with respect to block trades and large notional swaps:

(1) A swap market shall time-stamp swap transaction and pricing data with the date and time, to the nearest second of when such swap market:

(i) Receives data from a reporting party; and

(ii) Transmits such data to a real-time disseminator.

(2) A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall time-stamp such data with the date and time, to the nearest second when such swap data:

(i) Is received from a swap market or reporting party; and

(ii) Is publicly disseminated.

(3) All records relating to the time-stamps required by this section shall be maintained for a period of at least five years from the execution of the block trade or large notional swap.

(g) *Responsibilities of registered swap data repositories in determining appropriate minimum block size.*

(1) *In general.* A registered swap data repository shall determine the appropriate minimum block size for swaps for which such registered swap data repository receives data in accordance with Section 2(a)(13)(G) of the Act. A registered swap data repository shall set the appropriate minimum block size for each swap instrument as the greater of the numbers derived from the distribution test and the multiple test described in this paragraph. To qualify as a block trade, the notional or principal amount of the swap must be equal to or greater than the appropriate minimum block size.

(i) *Distribution test.* To apply the distribution test to a swap instrument, a registered swap data repository shall apply the minimum threshold to the distribution of the notional or principal transaction amounts, each as set forth in this paragraph.

(A) In determining the distribution of the notional or principal transaction amounts of a swap instrument, a registered swap data repository shall evaluate the transaction sizes, rounded in the manner discussed in § 43.4(i), for all swaps within a category of swap instrument, by looking at swaps within the category of swap instrument that are executed: on all swap execution facilities; on all designated contract markets; and as off-facility swaps. Registered swap data repositories may also consider other economic information to establish the total market size of a category of swap instrument, in consultation with the Commission.

(B) The minimum threshold shall be a notional or principal amount that is greater than 95% of the notional or principal transaction sizes in a swap instrument during the applicable period of time, as represented by the distribution of the notional or principal transaction amounts for such swap.

(ii) *Multiple test.* To apply the multiple test to a swap instrument, a registered swap data repository shall multiply the block multiple by the social size, as described in this paragraph.

(A) In determining the social size for a swap instrument, the registered swap data repository shall calculate the mode, mean and median transaction sizes for all swaps in the category of swap instrument and choose the greatest of the mode, mean and median transaction sizes.

(B) For all swaps, the block multiple shall be five.

(2) *Initial determination of appropriate minimum block size for newly-listed swaps.* A registered swap data repository shall make its initial determination of the appropriate minimum block size for a newly-listed swap one month after such newly-listed swap is first executed and reported to the registered swap data repository. Such registered swap data repository may make such a determination by:

(i) Grouping a newly-listed swap into an existing category of swap instrument for which the registered swap data repository has already determined an appropriate minimum block size; or

(ii) Creating a new category of swap instrument for the newly-listed swap and calculating the appropriate minimum block size based on the previous month's data.

(3) *Publication of appropriate minimum block sizes.* A registered swap data repository shall publish the appropriate minimum block sizes on its Internet Web site for all swap instruments. Additionally, a registered swap data repository shall publish the types of swaps that fall within a particular category of swap instrument, for which the registered swap data repository has received data on its Internet Web site. The appropriate minimum block size information and swap instrument information on the registered swap data repository's Internet Web site must be available to the public in an open and non-discriminatory manner.

(4) *Annual update.* A registered swap data repository shall each year beginning in January 2012, publish and update the appropriate minimum block sizes for the swap instruments for which the registered swap data repository accepts data. Any such updates must be posted on the registered swap data repository's Internet Web site by the tenth business day of each year. The registered swap data repository shall calculate the appropriate minimum block size based on the data that it has received over the previous year. If a registered swap data repository has received data for a category of swap instrument for less than one year, the appropriate minimum block size shall be calculated based on such data.

(5) *Appropriate minimum block size determination when more than one registered swap data repository.* If more than one registered swap data repository maintains data for a swap instrument, then the Commission shall prescribe the manner in which the appropriate minimum block trade size shall be determined.

(h) *Responsibilities of swap markets in determining minimum block trade sizes.* For any swap listed on a swap market, the swap market shall set the minimum block trade size. Swap markets must set the minimum block trade sizes for all listed contracts at levels greater than or equal to the appropriate minimum block sizes posted on the swap data repositories' Internet Web sites. Swap markets shall immediately apply any change to the minimum block trade size of a listed swap following the posting of a new or adjusted appropriate minimum block size on a registered swap data repository's Internet Web site, pursuant to the requirements set forth in part 40 of this chapter. If a swap listed on a swap market does not have an appropriate minimum block size, such swap market shall apply the rules set forth in § 43.5(i).

(i) *Minimum block trade size determination for newly-listed swaps.* For any newly-listed swap, the swap market that lists the swap for trading shall set the minimum block trade size.

(1) If a newly-listed swap is within the parameters of a category of swap instrument for which a registered swap data repository has posted an appropriate minimum block size, the swap market shall set the minimum block size for such newly listed swap at a level equal to or greater than such appropriate minimum block size.

(2) In determining the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, swap markets shall take into account:

(i) The anticipated distribution of notional or principal transaction amounts;

(ii) The social size for swaps in other markets that are in substance the same as such newly-listed swap; and

(iii) The minimum block trade sizes of similar swaps in the same asset class.

(3) In determining the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, the swap market that lists the swap must ensure that the notional or principal amount selected represents a reasonable estimate of the greater of:

(i) A notional or principal amount that is greater than all but 95% of the anticipated distribution of notional or principal transaction amounts over the one month period immediately following the first execution of the swap; or

(ii) Five times the anticipated social size over the one month period immediately following the first execution of the swap.

(j) *Responsibilities of the parties to a swap in determining the appropriate minimum large notional swap size.* (1) The parties to a large notional swap shall be responsible for determining the category of existing swap instrument in which such swap should be included. Once the category of existing swap instrument is identified by the parties to the swap, the parties shall refer to the appropriate minimum block size that is associated with such existing swap instrument and made available to the public on the appropriate registered swap data repository's Internet Web site, or as otherwise prescribed by the Commission. The notional or principal amount of the swap must be equal to or greater than the appropriate minimum block size of the swap instrument in order to qualify as a large notional swap. If there is not a swap instrument with an appropriate minimum block size available to reference, then such swap between the parties shall not qualify as a large notional swap or for any time delay in reporting. In determining the appropriate swap instrument, the following factors shall be documented—

(i) The similarities of the terms of the swap between the parties compared to the terms of swaps that are grouped within the existing swap instrument; and

(ii) Other swaps listed on swap markets that are grouped within an existing category of swap instrument.

(2) To the extent that the parties to a large notional swap are swap dealers and/or major swap participants, such parties shall maintain records illustrating the basis for the selection of the swap instrument for the large notional swap pursuant to part 23 of this chapter. Such records shall be made available to the Commission upon request.

(3) In the event that the parties to a swap seek to qualify such swap as a large notional swap, but are unable to determine, identify or agree on the appropriate swap instrument to refer to, such swap shall not qualify as a large notional swap and shall not qualify for any time delay in reporting.

(k) *Time delay in the real-time public reporting of block trades and large notional swaps.* (1) *In general.* The time delay for the real-time public reporting of a block trade or large notional swap begins upon execution. It is the responsibility of the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time to ensure the block trade or large notional swap transaction and pricing data is publicly disseminated following the appropriate time delay described in this section.

(2) *Time delay for standardized block trades and large notional swaps.* The block trade or large notional swap transaction and pricing data shall be reported to the public by the swap market (through a third-party service provider) or registered swap data repository that accepts and publicly disseminates such data within 15 minutes of the time of execution reflected in the data. This provision covers all swaps under Sections 2(a)(13)(C)(i) and (iv) of the Act.

(3) *Time delay for customized large notional swaps.* The large notional swap transaction and pricing data shall be reported to the public by the registered swap data repository that accepts and publicly disseminates such data subject to a time delay as may be prescribed by the Commission. This provision covers all swaps under Sections 2(a)(13)(C)(ii) and (iii) of the Act.

(l) Data to be reported to the public. With respect to block trades and large notional swaps, all information in the data fields described in appendix A to this part and § 43.4 shall be disseminated to the public.

(m) *Aggregation.* Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size requirement is prohibited. Aggregation is permissible if done by a commodity trading advisor acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, if such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management.

Appendix A to Part 43—Data Fields for Real-Time Public Reporting

The data fields described in Table A1 and Table A2, to the extent applicable for a particular reportable swap transaction, shall be real-time reported to the public. Table A1 and Table A2 provide guidance and examples for compliance with the reporting of each data field.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA

Field	Description	Example	Data application
Cancellation	An indication that a reportable swap transaction has been incorrectly or erroneously reported and is canceled. There shall be a clear indication to the public that the reportable swap transaction is being canceled (*e.g.,* "CANCEL") followed by the swap transaction and pricing data that is being canceled same form and manner that it was erroneously reported. Any cancellations should be made in accordance with § 43.3(f). If a reportable swap transaction is canceled, it may be corrected by reporting the "Correction" data field and the correct information.	CANCEL	Information is needed to inform market participants and the public that swap transaction and pricing data was erroneously disseminated to the public.
Correction	An indication that the swap transaction and pricing data that is being reported is a correction to previously publicly disseminated swap transaction and pricing data that contained an error or omission. In order for a correction to occur, the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data shall first cancel the incorrectly reported swap transaction and pricing data and the follow such cancellation with the correction. There shall be a clear indication to the public that the swap transaction and pricing data that is being reported is a correction (*e.g.,* "CORRECT"). Any corrections should be made in accordance with § 43.3(f).	CORRECT	Information needed to inform market participants and the public that a particular reportable swap transaction that is being reported is a correction to swap transaction and pricing data that has been publicly disseminated by a real-time disseminator.
Date stamp	The date of execution of the reportable swap transaction. The date shall be displayed with two digits for day, month, and year. The date stamp shall be reported only when the reportable swap transaction is executed on a day other than the current day or if the reportable swap transaction is a correction or cancellation.	13–10–07	Information needed to indicate the date of execution of the reportable swap transaction (if not the same day).
Execution time-stamp	The time of execution of the reportable swap transaction in Coordinated Universal Time (UTC). The time-stamp shall be displayed with two digits for each of the hour, minute and second.	15:25:47	Information needed to indicate the time of execution of the reportable swap transaction.
Cleared or uncleared	An indication of whether or not a reportable swap transaction is cleared by a derivatives clearing organization. If the reportable swap transaction is cleared by a derivatives clearing organization, a "C" may be used and if uncleared a "U" may be used. Alternatively, the entirety of the data fields reported to the public for the reportable swap transaction may be color coded white if the swap is cleared by a derivatives clearing organization and red if the reportable swap transaction is uncleared.	C	Information needed to indicate whether or not a reportable swap transaction is cleared through a derivatives clearing organization.
Indication of other price affecting term (non-standardized swaps).	An indication that the reportable swap transaction has one or more additional term(s) or provision(s), other than those listed in the required real-time data fields, that materially affect(s) the price of the reportable swap transaction. Reportable swap transactions that are reported with this designation would be non-standardized (bespoke) swaps.	B*	Information needed to indicate whether a reportable swap transaction is non-standardized (bespoke) and to inform the public that there are one or more additional term(s) or provision(s) that materially affect the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
	Some common material price affecting terms may include counterparty credit, collateral, day count fraction, changing notional amount, etc. A "B*" may be used to indicate that a reportable swap transaction has a material price affecting term that is not otherwise shown..		
Block trades and large notional swaps.	An indication of whether a reportable swap transaction is a block trade or large notional swap. If a reportable swap transaction is a block trade or a large notional swap and subject to a time delay in real-time public reporting pursuant to § 43.5, such block trade or large notional swap may be indicated as follows: block trade or large notional swap ("BLK"). If a trade is not a block trade or large notional swap, then this field may be left blank.	BLK	Information needed to indicate whether a reportable swap transaction is a block trade or a large notional swap. This information is important since it will alert market participants and the public to the differences in notional or principal amount and the time delay in real-time reporting the swap transaction and pricing data.
Execution venue	An indication of the venue of execution of a reportable swap transaction. Such indication may be indicated with a three character reference code as follows: reportable swap transaction executed on or pursuant to the rules of a swap market (SWM) or an off-facility swap (OFF).	OFF	Information needed to indicate whether a reportable swap transaction is executed on a swap market, as an off-facility swap, or as a block trade or large notional swap.
Swap instrument	A description of the instrument used to determine the appropriate minimum block size for block trades and large notional swaps. The swap instrument may be reported with the letters "SWI" followed by the description of the swap instrument. The swap instrument should be described in such a manner that it is clear to market participants and the public what is being reported. If there is no swap instrument, then "NA" may be reported.	SWI–ST–USD–IRS (*e.g.,* short term USD interest rate swaps).	Information needed to understand what swap instrument was used by the parties to a block trade or large notional swap to determine the appropriate minimum block trade size that was relied on to delay reporting pursuant to § 43.5.
Start date	The date that the reportable swap transaction becomes effective or starts. The effective date shall be displayed with two digits for day, month, and year. If a standardized start date is established for a particular swap, for example, the start date is always T+1 for a particular swap contract or the start date is standardized to start on a given date in the future (*e.g.,* the first of the following month), this field may not be necessary.	20–02–09	Information needed to indicate when the terms of the reportable swap transaction become effective or start.
Asset class	An indication of one of the five broad categories as described in § 43.2(e). Reportable swap transactions may be reported in the following asset classes with an appropriate two character symbol: interest rate (IR), currency (CU), credit (CD), equity (EQ), other commodity (CO)..	IR	Information needed to broadly describe the underlying asset to facilitate comparison with other similar reportable swap transactions.
Sub-asset class for other commodity.	An indication of a more specific description of the asset class for other commodity. Such sub-asset classes for other commodity reportable swap transactions may include, but are not limited to, energy, precious metals, metals—other, agriculture, weather, emissions and volatility. The sub-asset class may be reported with an appropriate two character symbol (*e.g.,* energy (EN)).	AG (agriculture swap)	Information needed to define with greater specificity, the type of other commodity that is being real-time reported and to facilitate comparison with other similar reportable swap transactions.
Contract type	An indication of one of four specific contract types of reportable swap transactions. The following product types shall be reported with an appropriate two character symbol: swap (S-), swaption (SO), forward (FO) and stand-alone options (O-).	S-	Information needed to describe the reportable swap transaction and to be able to compare such reportable swap transaction to other similar reportable swap transactions.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Contract sub-type	An indication of more specificity into the type of contract described in the contract type field. Such contract sub-types may include, but are not limited to, basis swaps, index swaps, broad based security swaps, and basket swaps. The contract sub-type may be reported with an appropriate two character symbol (*e.g.,* basket swap (SK)).	SS (basis swap)	Information needed to define with greater specificity, the type of contract that is being real-time reported and to facilitate comparison with other similar reportable swap transactions.
Price-forming continuation data.	An indication of whether such reportable swap transaction is a post-execution event that affects the price of the reportable swap transaction. The following price-forming continuation data may be reported with a designation as follows: novation (N-), partial novation (PN), swap unwind (U-), partial swap unwind (PU), other price-forming continuation data (PF).	PN	Information needed to describe whether the reportable swap transaction is a post-execution event for a pre-existing swap (*i.e.,* not a newly executed swap) that materially affects the price of the reportable swap transaction.
Underlying asset 1	The asset, reference asset or reference obligation for payments of a party's obligations under the reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other instrument agreed to by the parties to a reportable swap transaction. Reporting entities may refer to § 43.4(e) when reporting underlying asset.	TX (*e.g.,* TX represents "Treasury 10 year").	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Underlying asset 2	The asset, reference asset or reference obligation for payments of a party's obligations under the reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other instrument agreed to by the parties to a reportable swap transaction.. Reporting entities may refer to § 43.4(e) when reporting underlying asset.. If there are more than two underlying assets, such underlying assets shall be reported in the same manner as above.	IIIL (*e.g.,* IIIL represents 3-month LIBOR).	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Price notation	The premium, yield, spread or rate, depending on the type of swap, that is calculated at affirmation and nets to a present value of zero at execution. The pricing characteristic shall not include any premiums associated with margin, collateral, independent amounts, reconcilable post-execution events, options on a swap, or other non-economic characteristics. The format in which the pricing characteristic is real-time reported to the public shall be the format commonly sought by market participants for each particular market or contract.	2.53	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Additional price notation.	The additional pricing characteristic shall include any premiums associated with margin, collateral, independent amounts, reconcilable post-execution events, front end payments, back end payments, or other non-economic characteristics not illustrated in the reporting field for pricing characteristic. The additional pricing characteristic shall not include options as they are reported elsewhere. The format in which the additional pricing characteristic is real-time reported to the public shall be as an addition or subtraction of the pricing characteristic and in a way commonly sought by market participants for each particular market or contract.	+0.25	Additional information needed to describe the reportable swap and to help market participants and the public evaluate the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Unique product identifier.	Certain fields may be replaced with a unique product identifier, if such unique identifier exists, to the extent that such unique product identifier adequately describes such fields..	To be determined	Information needed to describe the reportable swap transaction and for market participants and the public to be able to compare such reportable swap transaction to other similar reportable swap transactions. Such information would substitute the information described in one or more reportable fields in accordance with § 43.4.
Notional currency 1	An indication of the type of currency that the notional amount is in. The notional currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	EUR	Information needed to describe the type of currency of the notional amount.
Notional or principal amount 1.	The total currency amount or quantity of units of the underlying asset. The notional or principal amounts for reportable swap transactions, including block trades and large notional swaps shall be reported pursuant § 43.4.	200	Information needed to identify the size of the reportable swap transaction and to help evaluate the price of the reportable swap transaction.
Notional currency 2	An indication of the type of currency that the notional amount is in. The notional currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	USD	Information needed to describe the type of currency of the notional amount.
Notional or principal amount 2.	The total currency amount or quantity of units of the underlying asset. The notional or principal amounts for reportable swap transactions, including block trades and large notional swaps, shall be reported pursuant to § 43.4. Each notional or principal amount (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the notional or principal amount is applicable. If there are more than two notional or principal amounts, each such additional notional or principal amount shall be reported in the same manner.	45	Information needed to identify the size of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Payment frequency 1 ..	An integer multiplier of a time period describing how often the parties to the reportable swap transaction exchange payments associated with each party's obligation under the reportable swap transaction. Such payment frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), Y (yearly).	2M	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Payment frequency 2 ..	An integer multiplier of a time period describing how often the parties to the reportable swap transaction exchange payments associated with each party's obligation under the reportable swap transaction. Such payment frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly). Each payment frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the payment frequency is applicable. If there are more than two payment frequency, each such additional payment frequency shall be reported in the same manner.	6W	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Reset frequency 1	An integer multiplier of a period describing how often the parties to the reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the reportable swap transaction. Such reset frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly).	1Y	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Reset frequency 2	An integer multiplier of a period describing how often the parties to the reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the reportable swap transaction. Such reset frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly). Each reset frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the reset frequency is applicable. If there are more than two reset frequencies, each such additional reset frequency shall be reported in the same manner.	6M	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Tenor	The maturity, termination, or end date of the reportable swap transaction. The tenor may be displayed with the 3 character month and year format used for futures contracts.. Reporting entities may refer to § 43.4(e) in reporting tenor.	Z15	Information needed to determine the end month and year of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.

If a swap has more than one embedded option, or multiple swaptions provisions, all such option provisions shall be reported in the same manner pursuant to the fields in Table A2 of Appendix A to this Part 43. When disseminated to the public, multiple embedded options associated with the same swap shall be clearly described and clearly linked to the swap with which the embedded option is associated.

TABLE A2—ADDITIONAL REAL-TIME PUBLIC REPORTING DATA FIELDS FOR OPTIONS, SAPTIONS AND SWAPS WITH EMBEDDED OPTIONS

Field	Description	Example	Data application
Embedded option on swap.	An indication of whether or not the option fields are for an embedded option. This indication may be displayed as "EMBED1," "EMBED2," etc. and should precede the option fields that describe the embedded option.	EMBED1	Information needed to describe whether an option is embedded in a swap to prevent confusion and allow the market participants and the public to understand the information that is being reported.
Option Strike Price	The level or price at which an option may be exercised. The option strike price may be displayed with the letter "O" followed immediately by the level or price.	O25	Information needed to indicate the level or price at which the option may be exercised to market participants and the public.

TABLE A2—ADDITIONAL REAL-TIME PUBLIC REPORTING DATA FIELDS FOR OPTIONS, SAPTIONS AND SWAPS WITH EMBEDDED OPTIONS—Continued

Field	Description	Example	Data application
Option Type	An indication of the type of option. The option type may be displayed with a two character code as follows: put (P-), call (C-), purchase to pay fixed vs. floating (PF), purchase to receive fixed vs. floating (RF) cap (PC), floors (F-), collar (RC), straddle (D-), strangle (G-), amortizing (A-), cancelable (NC), compounding (DC), knock-in (KI), knock-out (KO), reverse knock-in (RI), reverse knock-out (RO), one touch (OT), no touch (NT), double one-touch (DO), double no touch (DN), butterfly (BU), collar (L-), condor (R-), callable inverse snowball (JC), other exotic option types (XX).	P-	Information needed to adequately describe the option to market participants and the public.
Option Family	An indication of the style of the option transaction. The option style/family may be displayed as a two letter code as follows: European (EU), American (AM), Bermudan (BM), Asian (AS), other option style/family (YY).	EU	Information needed to adequately describe the option to market participants and the public.
Option currency	An indication of the type of currency of the option premium. The option currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	USD	Information needed to identify the type of currency of the option premium to market participants and the public.
Option premium	An indication of the additional cost of the option to the reportable swap transaction as a numerical value, not as the difference of the premiums of the party's obligations to the reportable swap transaction. This field shall be combined with the option currency field.	50000	Information needed to explain the market value of the option to market participants and the public at the time of execution. This field will allow the public to understand the price of the reportable swap transaction.
Option lockout period	An indication of the first allowable exercise date of the option. Such option lockout date shall be rounded to the month and reported using the three character month and year format used for futures contracts.	J19	Information is needed to identify when the option can first be exercised and to help market participants and the public evaluate the price of the option.
Option expiration	An indication of the date that the option is no longer available for exercise. Such option expiration shall be rounded off to the month and reported using the three character month and year format used for futures contracts.	Z20	Information is needed to identify when the option can no longer be exercised and to help market participants and the public evaluate the price of the option.

Issued in Washington, DC, on November 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Real-Time Public Reporting of Swap Transaction Data

I support the proposed rulemaking to implement a real-time public reporting regime for swaps. The proposed rules are designed to fulfill Congress's direction to bring public transparency to the entire swaps market, both standardized and customized swaps. This post-trade transparency will enhance price discovery and liquidity while ensuring anonymity and protection for large trades in appropriate cases. Per Congress's direction, the proposal requires real time reporting for swap transaction and pricing data to occur as soon as technologically practicable for trades other than trades of large notional size or block trades. Congress mandated that these trades be reported without delay regardless of whether they are standardized or customized.

With regard to block trades or trades of large notional size, the proposed rule includes two important features: a time delay and a method to report the large sizes. With regard to the delay, the proposed rule includes a 15-minute delay on standardized blocks. This compares to the futures marketplace, which currently has a five-minute delay for blocks, and the equities marketplace, which has an even shorter delay. With regard to customized trades of large notional size, the proposal asks a series of questions as to whether a similar delay of 15 minutes would be appropriate for interest rate, currency and other financial swaps and what delays may be appropriate for customized large trades referencing physical commodities. The second important feature with regard to block trades or trades of large notional size is a reporting method that transactions greater than $250 million notional amount—even the very largest of trades—will just be reported as being greater than $250 million. This will protect anonymity and promote the liquidity of these large trades.

The proposal on real time reporting includes the methods by which to calculate what a block trade is across the market for various swap instruments. This will be based on data collected by the swap data repositories in each of the asset classes. Lastly, the proposal includes an initial

implementation date of January 2012 to provide time for the initial setting of block sizes based on market data and time for market participants to prepare for such real time reporting requirements.

Real time post-trade reporting is critical to promoting market integrity and to benefit the investing and hedging public. When corporations, municipal governments, farmers and merchants seek to hedge their risk, they will benefit from seeing an accurate picture of where similar transactions are being priced concurrent with their decision-making. It is an essential ingredient of well-functioning markets. Such transparency increases liquidity and enhances the price discover function of the market.

[FR Doc. 2010–29994 Filed 12–6–10; 8:45 am]

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Federal Register

Tuesday,
December 7, 2010

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2010–0162]

RIN 2127–AK43

Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Cameron Gulbransen Kids Transportation Safety Act of 2007 directs NHTSA to issue a final rule amending the agency's Federal motor vehicle safety standard on rearview mirrors to improve the ability of a driver to detect pedestrians in the area immediately behind his or her vehicle and thereby minimize the likelihood of a vehicle's striking a pedestrian while its driver is backing the vehicle. Pursuant to this mandate, NHTSA is proposing to expand the required field of view for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles rated at 10,000 pounds or less, gross vehicle weight. Specifically, NHTSA is proposing to specify an area immediately behind each vehicle that the driver must be able to see when the vehicle's transmission is in reverse. It appears that, in the near term, the only technology available with the ability to comply with this proposal would be a rear visibility system that includes a rear-mounted video camera and an in-vehicle visual display. Adoption of this proposal would significantly reduce fatalities and injuries caused by backover crashes involving children, persons with disabilities, the elderly, and other pedestrians.

In light of the difficulty of effectively addressing of the backover safety problem through technologies other than camera systems and given the differences in the effectiveness and cost of the available technologies, we developed several alternatives that, compared to the proposal, offer less, but at least in one case still substantial, benefits and do so at reduced cost. We seek comment on those alternatives and on other possible ways to achieve the statutory objective and meet the statutory requirements at lower cost.

DATES: You should submit your comments early enough to ensure that the docket receives them not later than February 7, 2011.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online 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 or Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mr. Markus Price, Office of Vehicle Rulemaking, Telephone: (202) 666–0098. Facsimile: (202) 666–7002. For legal issues, you may contact Mr. Steve Wood, Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820. You may send mail to these officials at: The National Highway Traffic Safety Administration, Attention: NVS–010, 1200 New Jersey Avenue, SE., Washington DC 20590.

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I. Executive Summary

In this notice, the National Highway Traffic Safety Administration (NHTSA) is proposing to expand the current rear visibility requirements of all passenger cars, multipurpose passenger vehicles, trucks, buses, and low-speed vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds (lb) or less by specifying an area behind the vehicle that a driver must be able to see when the vehicle is in reverse gear. This rulemaking action is being undertaken in response to the Cameron Gulbransen Kids Transportation Safety Act of 2007 [1] (the "K.T. Safety Act," or the "Act"), which required that NHTSA undertake rulemaking to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the vehicle to reduce death and injury resulting from backing incidents known as backover crashes. A backover crash is a specifically-defined type of incident in which a non-occupant of a vehicle (most commonly, a pedestrian, but it could also be a cyclist) is struck by a vehicle moving in reverse.

Our assessment of available safety data indicates that on average there are 292 fatalities and 18,000 injuries (3,000 of which we judge to be incapacitating [2]) resulting from backover crashes every year. Of those, 228 fatalities and 17,000 injuries were attributed to backover incidents involving light vehicles (passenger cars, multipurpose passenger vehicles, trucks, buses, and low-speed vehicles) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

In analyzing the data, we made several tentative findings. First, many of these incidents occur off public roadways, in areas such as driveways and parking lots and involve parents (or caregivers) accidentally backing over children. Second, children under five years of age represent approximately 44 percent of the fatalities, which we believe to be a uniquely high percentage for a particular crash mode. Third and finally, when pickups and multipurpose passenger vehicles strike a pedestrian in a backover crash, the incident is four times more likely to result in a fatality than if the striking vehicle were a passenger car.

NHTSA believes that there are several potential reasons for these tentative findings, including, but not limited to, the attributes of the vehicle, vehicle exposure to pedestrians, and the driver's situational awareness while driving backward. However, due to difficulties in isolating each of those effects individually, we cannot at this time determine their relative contribution to the occurrence of these backover crashes.

In consideration of the areas that a driver cannot see either directly or using existing mirrors, the agency has tentatively concluded that providing the driver with additional visual information about what is directly behind the driver's vehicle is the only effective near-term solution at this time to reduce the number of fatalities and injuries associated with backover crashes.

Before reaching this tentative conclusion, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) and considered the public comments received in response to that notice.[3] The ANPRM reiterated some previous tentative findings on backover crash statistics; outlined current technologies that may have the ability to improve rear visibility including: improved direct vision (*i.e.,* looking directly out the vehicle's rear window), indirect vision via rear-mounted convex mirrors or rearview video systems, and rear object detection sensors; [4] and presented research findings on the effectiveness of those technologies.

The ANPRM set forth three approaches to defining the potential scope of applicability of the proposed requirements for improving rearward visibility.[5] The approaches included requiring improvements on a) all light vehicles, b) those light vehicles that are trucks, multipurpose passenger vehicles, or vans, or c) those light vehicles whose rear blind zone area (*i.e.,* the area behind a vehicle in which obstacles are not visible to a driver)

[1] Cameron Gulbransen Kids Transportation Safety Act of 2007, (Pub. L. 110–189, 122 Stat. 639–642), § 4 (2007).

[2] The Manual on Classification of Motor Vehicle Traffic Accidents (ANSI D16.1) defines "incapacitating injury" as "any injury, other than a fatal injury, which prevents the injured person from walking, driving or normally continuing the activities the person was capable of performing before the injury occurred" (Section 2.3.4).

[3] 74 FR 9478, March 4, 2009.

[4] While object detection sensors do not technically improve visibility in terms of providing a visual image comparable to what a driver could see with his or her own eyes, the Act indicated that sensors should be examined as a candidate technology for improving rear visibility. Such sensors could be used in combination of some type of visual display to show the location of detected objects.

[5] 74 FR 9504.

exceeds a specified size. We also presented ideas on how and on what basis to define the areas behind a vehicle that should be visible to a driver and general performance characteristics for mirrors, sensors, and rearview video systems. Finally, the ANPRM sought responses to 43 specific questions covering all of the above mentioned areas.

Thirty-seven entities commented in response to the ANPRM, including industry associations, automotive and equipment manufacturers, safety advocacy organizations, and 14 individuals. Generally, the comments can be grouped into four main areas according to the organization of ANPRM sections. The areas are: approaches for improving vehicles' rear visibility, effectiveness of the technologies, cost of the technologies, and performance requirements suitable for each type technology.

With regard to the issue of which vehicles most warrant improved rear visibility, vehicle manufacturers generally wanted to focus any expansion of rear visibility on the particular types of vehicles (*i.e.,* trucks, vans, and multipurpose passenger vehicles within the specified weight limits) that they believed posed the highest risk of backover crash fatalities and injuries. Vehicle safety organizations and equipment manufacturers generally suggested that all vehicles need to have expanded rear fields of view.

With regard to the issue of what technology would be effective at expanding the rear field of view for a driver, commenters discussed additional mirrors, sensors, and rearview video combined with sensors. Some commenters provided input regarding test procedure development and rear visibility countermeasure characteristics, such as visual display size and brightness, and graphic overlays superimposed on a video image. Some also discussed whether it is appropriate to allow a small gap in coverage immediately behind the rear bumper.

Finally, with regard to the issue of costs, commenters generally agreed with the cost estimates provided by the agency. However, some did suggest that our estimates of the cost of individual technologies seemed high and that there would be larger cost reductions over time than the agency had indicated.

To assess the feasibility and benefits of covering different areas behind the vehicle, NHTSA considered the comments received, the available safety data, our review of special investigations of backover crashes, and computer simulation. For example, we examined the typical distances that backover-crash-involved vehicles traveled from the location at which they began moving rearward to the location at which they struck a pedestrian. We tentatively concluded that an area with a width of 10 feet (5 feet to either side of a rearward extension of the vehicle's centerline) and a length of 20 feet extending backward from a transverse vertical plane tangent to the rearmost point on the rear bumper encompasses the highest risk area for children and other pedestrians to be struck. Therefore, we are proposing that test objects of a particular size within that area must be visible to drivers when they are driving backward.

To develop estimates of the benefits from adopting such a requirement, NHTSA used a methodology that reviewed backover crash case reports to infer whether the crash could be avoided with the aid of some technology, evaluated the performance of various countermeasures in detecting an object behind the vehicle, and tested whether the driver used the countermeasure and avoided the crash. Our evaluation of currently available technologies (mirrors, sensors, and rearview video systems) that may allow a driver to determine if there was a pedestrian in a 10 feet by 20 feet zone behind a vehicle indicates that rearview video systems are the most effective technology available today.

However, we note that technology is rapidly evolving, and thus, we are not proposing to require that a specific technology be used to provide a driver with an image of the area behind the vehicle. Consistent with statutory requirements and Executive Order 12866, we are not prescribing requirements that would expressly require the use of a specific technology and are attempting to promote compliance flexibility through proposing more performance oriented requirements. We have tentatively concluded that, in order to maintain the level of effectiveness that we have seen in our testing of existing rearview video systems, we should propose a minimum set of such requirements. Accordingly, this proposal sets forth requirements for the performance of the visual display, the rearview image, and durability requirements for any exterior components. Under this proposal, manufacturers would have flexibility to meet the requirements as they see fit (perhaps through the development of new or less expensive technology). Since we believe that manufacturers, in the near term, would likely use current production rearview video systems to achieve the required level of improved rear visibility and that most, if not all, systems in production today already meet this minimum set of requirements, we do not believe that the adoption of these requirements would increase the cost of this technology. However, we seek comment later in this preamble on including in the final rule requirements relating to additional matters such as image quality and display location.

Section 2(c) of the K.T. Safety Act requires that the requirement for improved rear visibility be phased in and that the phase-in process be completed within "48 months" of the publication of the final rule. Because we anticipate publishing a final rule by the statutory deadline of February 28, 2011, the rule must require full compliance not later than February 28, 2015. We note, however, that model years begin on September 1 and end on August 31 for safety standard compliance purposes and that February 28 falls in the middle of the model year that begins September 1, 2014. The agency believes that vehicle manufacturers would need, as a practical matter, to begin full compliance at the beginning of that model year, *i.e.,* on September 1, 2014. They could not wait until the middle of the model year to reach 100% compliance. Accordingly, NHTSA is proposing the following phase-in schedule:

- 0% of the vehicles manufactured before September 1, 2012;
- 10% of the vehicles manufactured on or after September 1, 2012, and before September 1, 2013;
- 40% of the vehicles manufactured on or after September 1, 2013, and before September 1, 2014; and
- 100% of the vehicles manufactured on or after September 1, 2014.

The agency recognizes that taking the dates on which model years begin and end for safety purposes effectively reduces the overall phase-in duration by 6 months (from 48 months to 42 months).

We invite comment on how to provide as much leadtime as possible within the limits of the statute. Specifically, should the agency change the structure of the phase-in schedule to allow for more flexibility and ease of implementation? We note that the statute explicitly requires an expanded field of view for all light vehicles and that there are substantial differences in the effectiveness of available technologies. Accordingly, the agency is proposing performance requirements that would trigger the installation of expensive technologies such as video camera systems for these vehicles. In view of the need to expand the field of

view for all vehicles and the statutory requirements set forth by Congress regarding timing and manner of implementation of the proposed requirements, however, the agency is limited in its ability to reduce the cost of this rulemaking through adjusting the application of the proposed rule or the specific deadline for implementation.

In evaluating the benefits and costs of this rulemaking proposal, the agency has spent considerable effort trying to determine the scope of the safety problem and the overall effectiveness of these systems in reducing crashes, injuries and fatalities associated with backing crashes. We have also estimated the net property damage effects to consumers from using any technology to avoid backing into fixed objects, along with the additional cost incurred when a vehicle is struck in the rear and the technology is damaged or destroyed.

The most effective technology option that the agency has evaluated is the rearview video system. Using the effectiveness estimates that we have generated and assuming that all vehicles would be equipped with this technology, we believe the annual fatalities that are occurring in backing crashes can be reduced by 95 to 112. Similarly, injuries would be reduced by 7,072 to 8,374.

However, rearview video is also the most expensive single technology. When installed in a vehicle without any existing visual display screen, rearview video systems are currently estimated to cost consumers between $159 and $203 per vehicle, depending on the location of the display and the angular width of the lens. For a vehicle that already has a suitable visual display, such as one found in route navigation systems, the incremental cost of such a system is estimated to be $58–$88, depending on the angular width of the lens. (We note that the cost may well decrease over time, as discussed below.)

Based on the composition and size of the expected vehicle fleet, the total incremental cost, compared to the MY 2010 fleet, to equip a 16.6 million new vehicle fleet with rearview video systems is estimated to be $1.9 billion to $2.7 billion annually. These costs are admittedly substantial. Nonetheless, the following considerations (discussed briefly here and at great length below in section VII.D. of this preamble) lead us to conclude tentatively that our proposal to implement the statutory mandate is reasonable and necessary, and that the benefits justify the costs. We request comment on this conclusion and on the various considerations that support it.

Those considerations include the following—

■ 100 of the 228 annual victims of backover crashes are very young children with nearly their entire lives ahead of them. There are strong reasons, grounded in this consideration and in considerations of equity, to prevent these deaths.

■ While this rulemaking would have great cost, it would also have substantial benefits, reducing annual fatalities in backover crashes by 95 to 112 fatalities, and annual injuries by 7,072 to 8,374 injuries. (We attempt to quantify these benefits below.)

■ Some of the benefits of the proposed rule are hard to quantify, but are nonetheless real and significant. One such benefit is that of not being the direct cause of the death or injury of a person and particularly a small child at one's place of residence. In some of these cases, parents are responsible for the deaths of their own children; avoiding that horrible outcome is a significant benefit. Another hard-to-quantify benefit is the increased ease and convenience of driving, and especially parking, that extend beyond the prevention of crashes. While these benefits cannot be monetized at this time, they could be considerable.

■ There is evidence that many people value the lives of children more than the lives of adults.[6] In any event, there is special social solicitude for protection of children. This solicitude is based in part on a recognized general need to protect children given their greater vulnerability to injury and inability to protect themselves.

■ Given the very young age of most of the children fatally-injured in backover crashes, attempting to provide them with training or with an audible warning would not enable them to protect themselves.

■ Given the impossibility of reducing backover crashes through changing the behavior of very young children and given Congress' mandate, it is reasonable and necessary to rely on technology to address backover crashes.

■ Based on its extensive testing, the agency tentatively concluded that a camera-based system is the only effective type of technology currently available.

■ Requiring additional rearview mirrors or changes to existing review mirrors cannot significantly increase the view to the rear of a vehicle except by means that reduce and distort the reflected image of people or objects behind a vehicle.

■ The agency's testing indicated that currently available sensors often failed to detect a human being, particularly a small moving child, in tests in which the vehicle was not actually moving. In tests in which the vehicle was moving, and when the sensors did detect a manikin representing a child, the resulting warning did not induce drivers to pause more than briefly in backing.

■ In contrast, in the agency's tests of video camera-based systems, drivers not only saw a child-sized obstacle, but also stopped and remained stopped.

■ Consequently, the agency has tentatively concluded that the requirements must have the effect of ensuring that some type of image is provided to the driver.

■ The agency's estimates of current costs for video camera-based systems may be too high.

■ The agency has a contract in place for conducting tear down studies that could produce somewhat lower cost estimates.

■ In time, types of technology other than a video camera-based system may be able to provide a sufficiently clear visual image of the area behind the vehicle at lower cost. We believe that it is reasonable to project that the costs of the requirements proposed here may well decline significantly over time. While extrapolations are uncertain, technology has been advancing rapidly in this domain, and future costs may well be lower than currently expected.

■ In light of statutory requirements, the agency is limited in its ability to reduce the cost of this rulemaking through adjusting either the requirements or application of the proposed rule or the schedule for its implementation.

■ Congress has mandated the issuance of a final rule instead of allowing the agency to retain discretion to decide whether to issue a final rule based on its consideration of all the relevant factors and information.

■ Less expensive countermeasures, *i.e.,* mirrors and sensors, have thus far shown very limited effectiveness and thus would not satisfy Congress's mandate for improving safety.

■ As the most cost-effective alternative, a requirement for a system that provides an image of the area behind the vehicle would be consistent with the policy preference underlying the Unfunded Mandates Reform Act.

[6] J.K. Hammitt and K. Haninger, "Valuing Fatal Risks to Children and Adults: Effects of Disease, Latency, and Risk Aversion," *Journal of Risk and Uncertainty* 40(1): 57–83, 2010. This stated preference study finds that the willingness to pay to prevent fatality risks to one's child is uniformly larger than that to reduce risk to another adult or to oneself. Estimated values per statistical life are $6–10 million for adults and $12–15 million for children. We emphasize that the literature is in a state of development.

■ Were the agency able to provide more than the amount of lead time permitted by the statutory mandate, the additional leadtime might be sufficient to allow the development of cheaper cameras.

As noted, the agency requests comments on all of the foregoing points. And in view of the cost of our proposed option, the agency is seeking comment and suggestions on any alternative options that would lower costs, maintain all or most of the benefits of the proposal, and lower net costs or the cost per equivalent life saved. We carefully explored our ability under the Act to vary the population of vehicles subject to the proposal, vary the performance requirements, and extend the leadtime to implement the proposal and thereby develop alternative options that offer benefits similar to those of our proposal, but at reduced cost. Although our ability to make any of those types of adjustments appears constrained as a legal or practical matter, and although none of the alternative options that the agency has been able to identify would accomplish all three of those goals, we are seeking comment on them and on any others that commenters may suggest.

We seek comment especially on the alternative option under which passenger cars would be required to be equipped with either a rearview visibility (*e.g.,* camera) system or with a system that includes sensors that monitor a specified area behind the vehicle and an audible warning that sounds when the presence of an object is sensed. Under this option, other vehicles rated at 10,000 pounds or less, gross vehicle weight, would be required to be equipped with a visibility system.

This alternative would have substantially lower, but still significant, safety benefits, substantially lower installation costs, lower net costs, and higher cost per equivalent life saved. Cars not equipped under this option with a rearview visibility system would be required to provide an audible warning inside the vehicle of not less than 85 dBa between 500–3000 Hz when a test object is placed in one of the locations specified for test objects in the requirements for rearview image performance and the vehicle transmission is shifted into reverse gear. Given that current sensors have a shorter range than rearview visibility systems, the test objects might need to be placed somewhat closer to the vehicle than they are when used to test the performance of rearview visibility systems. Alternatively, the test objects could be placed in the same locations as for rearward visibility systems, thus requiring sensors to have stronger signals. A disadvantage of doing that would be the risk of increased "false" activations. This requirement to sense the presence of a test object would be required to be met for each of the test object locations. The other requirements would be similar to those for the proposed rearview systems.

II. Background

A. Cameron Gulbransen Kids Transportation Safety Act of 2007

Subsection (2)(b) of the K.T. Safety Act directed the Secretary of Transportation to initiate rulemaking by February 28, 2009 to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors,* to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents.[7] The Secretary is required to publish a final rule within 36 months of the passage of the K.T. Safety Act (*i.e.,* by February 28, 2011).

Given that subsection (2)(b) requires the amendment of a Federal motor vehicle safety standard, this rulemaking is subject to both the requirements of subsection (b) and the requirements for such standards in the Vehicle Safety Act, 49 U.S.C. 30111.

Subsection (2)(b) contains the following requirements. Not later than 12 months after the date of the enactment of this Act, the Secretary shall initiate a rulemaking to revise Federal Motor Vehicle Safety Standard 111 (FMVSS 111) to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. The Secretary may prescribe different requirements for different types of motor vehicles to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. Such standard may be met by the provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view.

Subsection (2)(e) of the K.T. Safety Act broadly defines the term "motor vehicle," as used in subsection (2)(b), as follows: As used in this Act and for purposes of the motor vehicle safety standards described in subsections (a) and (b), the term 'motor vehicle' has the meaning given such term in section 30102(a)(6) of title 49, United States Code, except that such term shall not include—a motorcycle or trailer; or any motor vehicle that is rated at more than 10,000 pounds gross vehicular weight.

Section 30102(a)(6) of the National Traffic and Motor Vehicle Safety Act defines "motor vehicle" even more broadly as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

The K.T. Safety Act also specifies the rule must be phased-in and that it must be fully implemented within four years after the publication date of the final rule. The statutory language, contained in subsection (c) of the K.T. Safety Act, sets out these requirements for the phase-in period: The safety standards prescribed pursuant to subsections (a) and (b) shall establish a phase-in period for compliance, as determined by the Secretary, and require full compliance with the safety standards not later than 48 months after the date on which the final rule is issued.

In establishing the phase-in period of the rearward visibility safety standards required under subsection (b), the Secretary shall consider whether to require the phase-in according to different types of motor vehicles based on data demonstrating the frequency by which various types of motor vehicles have been involved in backing incidents resulting in injury or death. If the Secretary determines that any type of motor vehicle should be given priority, the Secretary shall issue regulations that specify which type or types of motor vehicles shall be phased-in first; and the percentages by which such motor vehicles shall be phased-in.

Congress emphasized the protection of small children and disabled persons, and added that the revised standard may be met by the "provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view." While NHTSA does not interpret the Congressional language to require that all of these technologies eventually be integrated into the final requirement, we have closely examined the merits of each of them, and present our analysis of their ability to address the backover safety problem.

We note that the inclusion of sensors as a "technology to expand the driver's field of view" suggests that the passage "expand the required field of view"

[7] As noted above, the agency first public step toward meeting this requirement was the issuance of an ANPRM. It was posted on the NHTSA Web site on February 27, 2009, and published in the **Federal Register** on March 3, 2009. 74 FR 9478.

should not be read in the literal way as meaning the driver must be able to *see* more of the area behind the vehicle. A literal reading would make the reference to sensors superfluous, violating a basic canon of statutory interpretation. Instead, it seems that language should be read as meaning the driver must be able to *monitor,* visually or otherwise, an expanded area.

Finally, section 4 of the K.T. Safety Act provides that if the Secretary determines that the deadlines applicable under the Act cannot be met, the Secretary shall establish new deadlines, and notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the new deadlines describing the reasons the deadlines specified under the K.T. Safety Act could not be met.

The relevant provisions in the Vehicle Safety Act are those in section 30111 of title 49 of the United States Code. Section 3011 states that the Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms. When prescribing a motor vehicle safety standard under this chapter, the Secretary shall consider relevant available motor vehicle safety information; consult with the agency established under the Act of August 20, 1958 (Pub. L. 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees); consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and consider the extent to which the standard will carry out section 30101 of this title.

B. Applicability

With regard to the scope of vehicles covered by the mandate, the statute refers to all motor vehicles rated at not more than 10,000 pounds gross vehicle weight (GVW) (except motorcycles and trailers). Specifically, it states that the Secretary shall "revise [FMVSS No. 111] to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle * * *," and defines a "motor vehicle" for purposes of the Act as any motor vehicle whose GVWR is 10,000 pounds or less, except trailers and motorcycles. This language means that the revised regulation could be applied to passenger cars, low-speed vehicles (LSVs), multipurpose passenger vehicles (MPVs),[8] buses (including small school buses and school vans), and trucks with a GVWR of 10,000 pounds or less. In this document, we are proposing that each of these types of vehicles would be subject to improved rear visibility requirements.

We note, however, that in our review of real-world crashes, NHTSA could not determine whether there were any backover incidents involving LSVs, small school buses, and school vans. Accordingly, we seek comment and data related to the issue of whether, if the agency remains unable to find such incidents, it could reasonably conclude that those vehicles pose no unreasonable risk of backover crashes and whether it would be permissible therefore it to exclude these vehicles from the application of the final rule. The agency invites comment on whether the absence of incidents might reflect operational conditions (school vehicles-operation in environments in which the vulnerable age groups are unlikely to be present or perhaps avoidance of backing maneuvers) or a possible absence of any blind spot behind the vehicle (some LSVs).

C. Backover Crash Safety Problem

i. Definitions and Summary

A backover crash is a specifically-defined type of incident, in which a non-occupant of a vehicle (*i.e.,* a pedestrian or cyclist) is struck by a vehicle moving in reverse. As stated in the ANPRM, using a variety of available data sources, NHTSA has identified a total population of 228 fatalities and 17,000 injuries due to light vehicle backover crashes.[9] Unlike other crashes, the overwhelming majority of backover crashes occur off of public roadways, in areas such as driveways and parking lots. Children and people over 70 are also far more likely than other groups to be victims of backover crashes. In the case of children, their short stature can make them extremely difficult for a driver to see using direct vision or existing mirrors.

Because many backover crashes occur off public roadways, NHTSA's traditional methodologies for collecting data as to the specific numbers and circumstances of backover incidents have not always given the agency a complete picture of the scope and circumstances of these types of incidents. The following sections detail NHTSA's attempts to both quantify the number of backover incidents and determine their nature.

In response to section 2012 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA–LU),[10] NHTSA developed the "Not-in-Traffic Surveillance" (NiTS) system to collect information about all nontraffic crashes, including nontraffic backing crashes. NiTS provided information on these backing crashes that occurred off the traffic way and which were not included in NHTSA's FARS database or NASS–GES. The subset of backing crashes that involve a pedestrian, bicyclist, or other person not in a vehicle, is referred to as "backover crashes." This is distinguished from the larger category of "backing crashes," which would include such non-backover events such as a vehicle going in reverse and colliding with another vehicle, or a vehicle backing off an embankment or into a stationary object. While the primary purpose of this rulemaking is to prevent backover crashes, any improvements to rear visibility should also have a positive effect on all types of backing crashes.

The national estimates for fatalities and injuries presented in the ANPRM were developed using data from FARS, NASS–GES, and the NiTS. While there are newer estimates available for FARS and NASS–GES, there are not for the NiTS and therefore the estimates we provided in the ANPRM and in this document represent the most current data available. As such, based on the currently available data, NHTSA estimates that 463 fatalities and 48,000 injuries a year occur in traffic and nontraffic backing crashes.[11] Most of these injuries are minor, but an estimated 6,000 per year are incapacitating injuries. Overall, an estimated 65 percent (302) of the fatalities and 62 percent (29,000) of the injuries in backing crashes occurred in nontraffic situations.

Based on existing data, NHTSA estimates the following number of injuries and fatalities. Overall, backing crashes result in approximately 463 fatalities and 48,000 injuries. Of those, the subset of backover crashes comprises 292 fatalities (63 percent) and 18,000 injuries (38 percent). These figures are reflected in Table 1 below.

[8] Per 49 CFR 571.3, multipurpose passenger vehicle means a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

[9] 49 FR 9482.

[10] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, August 10, 2005.

[11] Fatalities and Injuries in Motor Vehicle Backing Crashes, NHTSA Report to Congress (2008), DOT HS 811 144. *http://www-nrd.nhtsa.dot.gov/Pubs/811144.PDF.*

TABLE 1—ANNUAL ESTIMATED FATALITIES AND INJURIES IN ALL BACKING CRASHES FOR ALL VEHICLES [12]

Injury severity	Total	Backover crashes	Other backing crashes
	Estimated total	Estimated total	Estimated total
Fatalities	*463*	*292*	*171*
Incapacitating Injury	6,000	3,000	3,000
Non-incapacitating Injury	12,000	7,000	5,000
Possible Injury	27,000	7,000	20,000
Injured Severity Unknown	2,000	1,000	2,000
Total Injuries	*48,000*	*18,000*	*30,000*

Source: FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.
Note: Estimates may not add up to totals due to independent rounding. [Note to agency, unknowns will be updated prior OST approval to reflect optics that 2,000 + 1,000 does not equal 2.]

ii. Backover Crash Risk by Crash and Vehicle Type

Backovers account for an estimated 63 percent of all fatal backing crashes involving all vehicle types. As indicated in Table 2, an estimated 15 percent (68) of the backing crash fatalities occur in multivehicle crashes, and an estimated 13 percent (62) occur in single-vehicle non-collisions, such as occupants who fall out of and are struck by their own backing vehicles. About half of the backing crash injuries (20,000 per year) occur in multi-vehicle crashes involving backing vehicles.

TABLE 2—FATALITIES AND INJURIES BY BACKING CRASH TYPE [13]

Backing crash scenarios	All vehicles		Passenger vehicles	
	Fatalities	Injuries	Fatalities	Injuries
Backovers: Striking Non-occupant	292	18,000	228	17,000
Backing: Striking Fixed Object	33	2,000	33	2,000
Backing: Single-vehicle Non-collision	62	1,000	53	1,000
Backing: Striking/Struck by Other Vehicle (multi-vehicle)	68	24,000	39	20,000
Backing: Other	8	3,000	8	3,000
Total Backing	*463*	*48,000*	*361*	*43,000*

Source: FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.
Note: Estimates may not add up to totals due to independent rounding.

Most backover fatalities and injuries involve passenger vehicles. Tables 2 and 3 indicate that all major passenger vehicle types (cars, trucks, multipurpose passenger vehicles, and vans) with GVWR of 10,000 pounds or less are involved in backover fatalities and injuries. However, the data indicate that some vehicles show a greater involvement in backing crashes than other vehicles. Table 3 illustrates that pickup trucks and multipurpose passenger vehicles are statistically overrepresented in backover fatalities when compared to all non-backing traffic injury crashes and to their proportion to the passenger vehicle fleet. The agency's analysis revealed that while LTVs were statistically overrepresented in backover-related fatalities, they were not significantly overrepresented in backover crashes generally.

TABLE 3—PASSENGER VEHICLE BACKOVER FATALITIES AND INJURIES BY VEHICLE TYPE [14]

Backing vehicle type (GVWR 10,000 lb or less)	Fatalities	Percent of fatalities	Estimated injuries	Estimated percent of injuries	Percent of fleet
Car	59	26	9,000	54	58
Utility Vehicle	68	30	3,000	20	16
Van	29	13	1,000	6	8
Truck	72	31	3,000	18	17
Other Vehicles	0	0	*	2	<1
Passenger Vehicles	*228*	*100*	*17,000*	*100*	*100*

Source: FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.
Note: * Indicates estimate less than 500, estimates may not add up to totals due to independent rounding.

[12] Ibid.

[13] Ibid.

iii. Backover Crash Risk by Victim Age

NHTSA's data indicate that children and adults over 70 years old are disproportionately represented in passenger vehicle backover crashes. Table 4 details the ages for fatalities and injuries for backover crashes involving all vehicles as well as those involving passenger vehicles only. It also details the proportion of the U.S. population in each age category from the 2007 U.S. Census Bureau's Population Estimates Program for comparison. Similar to previous findings, backover fatalities disproportionately affect children under 5 years old and adults 70 or older. When restricted to backover fatalities involving passenger vehicles, children under 5 years old account for 44 percent of the fatalities, and adults 70 years of age and older account for 33 percent. The difference in the results between all backover crashes and passenger vehicle backover crashes occur because large truck backover crashes, which are excluded from the passenger vehicle calculations, tend to affect adults younger than 70 years of age.

TABLE 4—ALL BACKOVER CRASH FATALITIES AND INJURIES BY VICTIM AGE [15]

Age of victim	*Fatalities*	*Percent of fatalities*	*Estimated injuries*	*Estimated percent of injuries*	*Percent of population* **
All Vehicles					
Under 5	103	35	2,000	8	7
5–10	13	4	*	3	7
10–19	4	1	2,000	12	14
20–59	69	24	9,000	48	55
60–69	28	9	2,000	8	8
70+	76	26	3,000	18	9
Unknown	.....	.....	*	2	.....
Total	*292*	*100*	*18,000*	*100*	*100*
Passenger Vehicles					
Under 5	100	44	2,000	9	7
5–10	10	4	1,000	3	7
10–19	1	1	2,000	12	14
20–59	29	13	8,000	46	55
60–69	15	6	1,000	8	8
70+	74	33	3,000	19	9
Unknown	.....	.....	*	2	.....
Total	*228*	*100*	*17,000*	*100*	*100*

Note: * Indicates estimate less than 500, estimates may not add up to totals due to independent rounding.
Note: ** Source: U.S. Census Bureau, Population Estimates Program, 2007 Population Estimates; FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.

The proportion of backover injuries by age group is more similar to the proportion of the population than for backover fatalities. However, while children under 5 years old appear to be slightly statistically overrepresented in backover injuries compared to the population, adults 70 years of age and older appear to be greatly overrepresented.

Table 5 presents passenger vehicle backover fatalities by year of age for victims less than 5 years old. Out of all backover fatalities involving passenger vehicles, 26 percent (60 out of 228) of victims are 1 year of age and younger.

TABLE 5—BREAKDOWN OF BACKOVER CRASH FATALITIES INVOLVING PASSENGER VEHICLES FOR VICTIMS UNDER AGE 5 YEARS [16]

Age of victim (years)	*Number of fatalities*
0	< 1
1	59
2	23
3	14
4	3
Total	*100*

Note: Estimates may not add to totals due to independent rounding.
Source: US Census Bureau, Population Estimates Program, 2007 Population Estimates; FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.

iv. Special Crash Investigation of Backover Crashes

As reported in the ANPRM, NHTSA's efforts to collect data on police-reported backover crashes have included a Special Crash Investigation (SCI) program. The SCI program was created to examine the safety impact of rapidly changing technologies and to provide NHTSA with early detection of alleged or potential vehicle defects.

SCI began investigating cases related to backover crashes in October 2006.[17] SCI receives notification of potential backover cases from several different sources including media reports, police and rescue personnel, contacts within NHTSA, reports from the general public, as well as notifications from the NASS. As of August 2009, roughly 80 percent of 849 total "Not-in-Traffic Surveillance" system incident notifications that SCI had received regarded backover

[14] Ibid.
[15] Ibid.
[16] 74 FR 9478.
[17] Fatalities and Injuries in Motor Vehicle Backing Crashes, NHTSA Report to Congress (2008).

crashes.[18] For the purpose of the SCI cases, an eligible backover is defined as a crash in which a light passenger vehicle's back plane strikes or passes over a person who is either positioned to the rear of the vehicle or is approaching from the side. SCI primarily focuses on cases involving children; however, it investigates some cases involving adults. The majority of notifications received do not meet the criteria for case assignment. Typically, the reasons for not pursuing further include:

- The reported crash configuration is outside of the scope of the program,
- Minor incidents with no fatally or seriously injured persons, or
- Incidents where cooperation cannot be established with the involved parties.

As an example, many reported incidents are determined to be side or frontal impacts, which exclude them from the program. Cases involving adult victims were generally excluded from the study unless they were seriously injured or killed or if the backing vehicles were equipped with backing or parking aids.

The SCI effort to examine backover crashes includes an on-site inspection of the scene and vehicle, as well as interviews of the involved parties when possible. When an on-site investigation is not possible, backover cases are investigated remotely through an examination of police-provided reports and photos as well as interviews with the involved parties. For each backover case investigated, a case vehicle visibility study is also conducted to determine the size of the vehicle's blind zones and also to determine at what distance behind the vehicle the occupant may have become visible to the driver.

Thus far, NHTSA has completed special crash investigations of 58 backover cases. The 58 backing vehicles were comprised of 18 passenger cars, 22 multipurpose passenger vehicles, 5 vans (including minivans) and 13 pickup trucks. For cases in which an estimated speed for the backing vehicle was available, the average speed of the backing vehicle was approximately 3 mph. Of the 58 SCI backover cases, 95 percent (55) of the cases occurred in daylight conditions. Half (29) involved a non-occupant fatality.

Four of the 58 cases involved vehicles equipped with a parking aid system. All four systems were sensor-based parking aids. In two vehicles, the systems had been manually turned off for unknown reasons. In one backover case, the system did not detect an elderly female who had fallen behind a sensor-equipped vehicle, and presumably positioned at a height below the detection zone of the sensors. In the fourth case the system did detect the adult pedestrian victim and provided a warning that prompted the driver to stop the vehicle, but the driver looked rearward and did not see an obstacle so he began backing again and struck the victim.

One issue that was evident from the SCI cases is that very few instances involved victims that were easily visible from the driver's position. Instead, most of the victims were either children (who were too short to be seen behind the vehicle), or adults who had fallen or bent over and were also thus not in the driver's field of view. Eighty-eight percent of the backover crashes (51 of the 58) involved children, ranging in age from less than 8 months old up to 13 years old, who were struck by vehicles. The other 12 percent of the 58 cases involved adult victims aged 30 years or older. Of the 8 adult victims, 4 were in an upright posture either standing or walking and one of those 4, as noted in the prior paragraph, had been detected by a rear parking sensor system, but the driver only stopped briefly before continuing to back and then struck the person. Of the remaining four adult victims documented in the SCI cases, one was bending over behind a backing vehicle to pick up something from the ground, one was an elderly female who had fallen down in the path of the vehicle prior to being run over, and the postural orientation of the remaining two was unknown.

Based on NHTSA's analysis of the quantitative data and narrative descriptions of how the 58 SCI-documented backover incidents transpired, the breakdown of the victim's path of travel prior to being struck is as follows: 41 (71 percent) were approaching from the right or left of the vehicle, 12 were in the path of the backing vehicle, 4 were unknown, and one was "other".[19]

Subsequent to the ANPRM, NHTSA further analyzed these SCI backover cases to assess how far the vehicle traveled before striking the victim. Distances traveled for these cases ranged from 1 to 75 feet. Overall, as shown in Table 6 below, this analysis showed that in 77 percent of real-world, SCI backover cases, the vehicle traveled up to 20 feet. While the subset may or may not nationally representative of all backing crashes, we believe this information from the SCI cases could be used in the development of a required visible area and the associated development of a compliance test.

TABLE 6—AVERAGE DISTANCE TRAVELED BY BACKING VEHICLE FOR FIRST 58 SCI BACKOVER CASES AND PERCENT OF BACKOVER CRASHES THAT COULD BE AVOIDED

	Number of SCI cases	Average distance traveled prior to Strike (ft)	7ft (%)	15ft (%)	20ft (%)	35ft (%)
Car	18	13.7	39	56	78	89
SUV	22	13.4	27	68	82	100
Minivan	4	31.0	25	50	50	75
Van	1	54.5	0	0	0	0
Pickup	13	17.2	38	69	69	92
All Light Vehicles	58	26.0	33	63	77	93

[18] Since SCI investigates as many relevant cases that they are notified about as possible and not on a statistical sampling of incidents, results are not representative of the general population.

[19] Note that one or more cases examined involved multiple victims, causing the total of the path breakdown scenarios to be 53 rather than 52.

v. Analysis of Backover Crash Risk by Pedestrian Location Using Monte Carlo Simulation

As noted in the ANPRM, NHTSA also calculated backover crash risk as a function of pedestrian location using a Monte Carlo simulation.[20] Data from a recent NHTSA study of drivers' backing behavior,[21] such as average backing speed and average distance covered in a backing maneuver, were used to develop a backing speed distribution and a backing distance distribution that were used as inputs to the simulation. Similarly, published data [22] [23] [24] characterizing walking and running speeds of an average 1-year-old child were also used as inputs. A Monte Carlo simulation was performed that drew upon the noted vehicle and pedestrian motion data to calculate a probability-based risk weighting for a test area centered behind the vehicle. The probability-based risk weightings for each grid square were based on the number of pedestrian-vehicle backing crashes predicted by the simulation for trials for which the pedestrian was initially (*i.e.,* at the time that the vehicle began to back up) in the center of one square of the grid of 1-foot squares spanning 70 feet wide by 90 feet in range behind the vehicle. A total of 1,000,000 simulation trials were run with the pedestrian initially in the center of each square.

The output of this analysis calculated relative crash risk values for each grid square representing a location behind the vehicle. Analysis results showed that the probability of crash decreases rapidly as the pedestrian's initial location is moved rearward, away from the rear bumper of the vehicle. Areas located behind the vehicle and to the side were also shown to have moderately high risk, giving pedestrians some risk of being hit even though they were not initially directly behind the vehicle. The results suggest that an area 12 feet wide by 36 feet long centered behind the vehicle would address pedestrian locations having relative crash risks of 0.15 and higher (with a risk value of 1.0 being located directly aft of the rear bumper). To address crash risks of 0.20 and higher, an area 7 feet wide and 33 feet long centered behind the vehicle would need to be covered. The analysis showed that an area covering approximately the width of the vehicle out to a range of 19 feet would encompass risk values of 0.4 and higher.

D. Comparative Regulatory Requirements

As of today, no country has established a requirement for the minimum area directly behind a light vehicle that must be directly or indirectly visible. All countries do, however, have standards for side and interior rearview mirrors, although slight differences do exist in terms of mirror requirements.

i. Current FMVSS No. 111

FMVSS No. 111, *Rearview mirrors,* sets requirements for motor vehicles to be equipped with mirrors that improve rearward visibility.[25] This standard sets different requirements for various classes of vehicles, notably including passenger cars in paragraph S5, and multipurpose passenger vehicles (MPVs), trucks, and buses (including school buses and school vans) with a GVWR of 10,000 pounds or less in paragraph S6. The purpose of this standard is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.

With respect to passenger cars, paragraph S5 of the standard sets requirements for both the rearward area to the sides of the vehicle, as well as the area directly behind the vehicle. With regard to the requirements for viewing the area directly behind the vehicle, paragraph S5 requires that the inside mirror must have a field of view at least 20 degrees wide and a sufficient vertical angle to provide a view of a level road surface extending to the horizon beginning not more than 200 feet (61 m) behind the vehicle. If this requirement is not met, the standard requires that a flat [26] or convex exterior mirror must be mounted on the passenger's side of the vehicle; although no specific field of view is required.

With regard to the rearward area to the side of the vehicle, paragraph S5 requires a driver's side rearview mirror to be mounted on the outside of the vehicle. This mirror is required to be a plane mirror that provides "the driver a view of a level road surface extending to the horizon from a line, perpendicular to a longitudinal plane tangent to the driver's side of the vehicle at the widest point, extending 2.4 m (7.9 ft) out from the tangent plane 10.7 m (35.1 ft) behind the driver's eyes, with the seat in the rearmost position."

Paragraph S6 sets mirror requirements for buses (including school buses and school vans), trucks, and MPVs, with a GVWR of 10,000 pounds or less. Unlike the requirement for passenger cars, paragraph S6 does not set a requirement for a rear field of view directly behind the vehicle, but only sets a requirement for the rearward area to the sides of the vehicle. Pursuant to paragraph S6, vehicles must have either mirrors that conform to paragraph S5 or outside mirrors of unit magnification with reflective surface area of not less than 126 square centimeters (19.5 square inches) on each side of the vehicle. We note that under S6, manufacturers are given the option to have mirrors that conform to S5, instead of the requirements listed in S6. As paragraph S6 does not establish minimum rear field of view requirements for the area directly behind the vehicle, existing state laws or regulations may regulate the vehicle's rear field of view for vehicles subject to the requirements of paragraph S6.

FMVSS No. 111 also includes requirements for school buses in paragraph S9. These requirements are substantially more robust than the mirror requirements for other vehicles. The standard also contains test procedures (paragraph S13) for determining the performance of school bus mirrors.

ii. Relevant European Regulations (Also United Kingdom and Australia)

In 1981, the United Nations Economic Commission for Europe enacted Regulation 46 (ECE R46), which details uniform provisions concerning the approval of devices for indirect vision.[27] ECE R46 defines devices for indirect vision as those that observe the area adjacent to the vehicle which cannot be observed by direct vision, including "conventional mirrors, camera-monitors or other devices able to present information about the indirect field of vision to the driver." ECE R46 permits either exterior planar or convex mirrors

[20] 49 FR 9484.

[21] Mazzae, E. N., Barickman, F. S., Baldwin, G. H. S., and Ranney, T. A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT HS 811 024.

[22] Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition. Washington, DC: FHWA, November 2003.

[23] Milazzo, J.S., Rouphail, J.E., and Alien, D.P. (1999). Quality of Service for Interrupted-Flow Pedestrian Facilities in Highway Capacity Manual 2000. Transportation Research Record, No. 1678 (1999): 25–31.

[24] Chou, P., Chou, Y., Su, F., Huang, W., Lin, T. (2003). Normal Gait of Children. Biomedical Engineering—Applications, Basis & Communications, Vol. 15 No. 4 August 2003.

[25] 49 CFR 571.111, Standard No. 111, Rearview mirrors.

[26] Flat mirrors are referred to as "planar" or "unit magnification" mirrors.

[27] ECE R46–02, Uniform Provisions Concerning the Approval of: Devices for Indirect Vision and of Motor Vehicles with Regard to the Installation of these Devices, (August 7, 2008).

on both sides of the vehicle, provided a minimum field of view is satisfied. Specifications are also provided to define the required minimum surface area of the interior rearview mirror.

The ECE R46 regulation previously outlined requirements for devices for indirect vision other than mirrors for vehicles with more than eight seating positions and those configured for refuse collection. However, in an August 7, 2008 amendment all performance requirements were removed and replaced with the statement, "Vehicles may be equipped with additional devices for indirect vision." [28] This change allows for indirect vision systems to be installed on European vehicles without meeting any performance requirements.

iii. Relevant Regulations in Japan and Korea

The Japanese regulation, Article 44, provides a performance based requirement for rearview mirrors.[29] For light vehicles, rearview mirrors must be present that enable drivers to check the traffic situation around the left-hand lane edge and behind the vehicle from the driver's seat.[30] The regulation requires that the driver be able to "visually confirm the presence of a cylindrical object 1 m high and 0.3 m in diameter (equivalent to a 6-year-old child) adjacent to the front or the left-hand side of the vehicle (or the right-hand side in the case of a left-hand drive vehicle), either directly or indirectly via mirrors, screens, or similar devices." Article 44 does not specify requirements for rear-mounted convex mirrors and rearview video systems. Rear-mounted convex mirrors are commonly found on multipurpose passenger vehicles and vans in Japan.

The Korean regulation on rearview mirrors, Article 50 outlines rearview mirror requirements for a range of vehicles. Article 50 requires a flat or convex exterior mirror mounted on the driver's side for passenger vehicles and buses with less than 10 passengers. For buses, cargo vehicles, and special motor vehicles, flat or convex rear-view mirrors are required on both sides of the vehicle. Article 50 does not address rear-mounted convex mirrors and rearview video systems, therefore these devices are allowed, but not required under the standard. Again, rear-mounted convex mirrors can be found on SUVs and vans in Korea.

iv. State Regulations

In the ANPRM, NHTSA requested comment on whether states or municipalities have regulations pertaining to rear visibility requirements.[31] NHTSA has found that two states, New York and New Jersey, have motor vehicle regulations that require some single-unit trucks to have a cross-view mirror or electronic backup device. Specifically, the regulations apply to vehicles with a "cube-style" or "walk-in type" cargo bay. We note that while the K.T. Safety Act applies primarily to passenger vehicles, the state regulations apply only to vehicles used for commercial purposes. However, we note that some commercial vehicles may be encompassed by the proposed regulations, and that issues of Federal preemption could apply. This is discussed in more detail in Section IX.

III. Advance Notice of Proposed Rulemaking

The ANPRM set forth the agency's analysis of the crash data and safety problem, our research progress, and ideas for possible proposals.[32] Specifically, the ANPRM reiterated some previous findings on backover statistics, presented research findings on the effectiveness of various countermeasures, and outlined options for improving rear visibility including: Improved direct vision (*i.e.,* looking directly out the vehicle's rear window) or indirect vision via rear-mounted convex mirrors, rearview video systems, and rear object detection sensors. The notice also set forth three approaches to defining the scope of the applicability of the enhancements to FMVSS No. 111 being contemplated by the agency. The approaches included requiring a rear visibility countermeasure on all light vehicles, only LTVs, or just a portion of the fleet as determined using a rear blind zone area threshold. Such a threshold would indicate what size of area behind the vehicle in which a driver cannot see obstacles is too large based on an associated high rate of backing or backover crashes. Several approaches for developing a threshold were provided, including a vehicle type approach and multiple implementations of a rear blind zone area threshold approach. Finally, the ANPRM sought responses to approximately forty-three specific questions addressing the feasibility and performance of various technologies, technology cost, and requesting feedback on NHTSA's ideas about possible approaches for countermeasure application throughout all or a portion of the fleet. Sections A through D of this section summarize the information presented and the subsequent sections summarize the comments received.

A. Technologies To Mitigate Backover Crashes

Systems to aid drivers in performing backing maneuvers have been available for nearly two decades. To date, original equipment systems have been marketed as a convenience feature or "parking aid" for which the vehicle owner's manual often contains language denoting sensor performance limitations with respect to detecting children or small moving objects. Aftermarket systems, however, are often marketed as safety devices for warning drivers of the presence of small children behind the vehicle.

Since the early 1990s, NHTSA has actively researched approaches to mitigate backing crashes with pedestrians for heavy and light vehicles by assessing the effectiveness of various backing aid technologies. In addition to sensor-based rear object detection systems, the agency has evaluated rear-mounted convex mirrors and rearview video systems. To date, our evaluation and testing results indicate that rearview video systems not only offer drivers the most comprehensive view behind a vehicle but drivers seem to use them more effectively in avoiding a conflict situation with a pedestrian when compared to additional mirrors and sensors. The following paragraphs provide a summary of the information presented in the ANPRM describing each of the system types assessed by NHTSA to date and our observations on how they could be used to improve the rear visibility of current vehicles.

i. Rear-Mounted Convex Mirrors

Rear-mounted convex mirrors are mirrors with a curved reflective surface that can be mounted internal or external to the vehicle. Their design is such that they compress a reflected image to provide a wider field of view than planar (*i.e.,* flat) mirrors. When used on vehicles, the mirrors may be mounted at the rear to allow a driver to see areas behind the vehicle. A single rear-mounted mirror can be mounted at the upper center of the rear window with the reflective surface pointing at the ground (commonly referred to as backing mirrors, under mirrors, or "look-down" mirrors) or at the driver's side on the upper corner of the vehicle

[28] Section 15.3.5 of ECE R46–02, Uniform Provisions Concerning the Approval of: Devices for Indirect Vision and of Motor Vehicles with Regard to the Installation of these Devices, (August 7, 2008).

[29] Japanese Safety Regulation Article 44 and attachments 79–81.

[30] Vehicles manufactured for the Japanese market are right-hand drive.

[31] 74 FR 9480.

[32] 74 FR 9478, [Docket No. NHTSA–2009–0041].

(commonly seen on delivery vans or mail delivery trucks and called "corner mirrors") to show the area behind the vehicle. Both look-down and corner convex mirrors are typically positioned to show a portion of the rear of the vehicle to give drivers a visual reference point. Alternatively, rear convex "cross-view" mirrors pairs can be integrated into the inside face of both rearmost pillars or attached to the rear glass to show objects approaching on a perpendicular path behind the vehicle to aid a driver when backing into a right-of-way. While cross-view mirrors are available for passenger cars and LTVs, rear convex look-down and corner mirrors can only be mounted on vehicles with a vertical rear window, such as vans and SUVs. Rear-mounted convex mirrors are primarily available as aftermarket products in the U.S., but are also available as original equipment on at least one multipurpose passenger vehicle.[33] In Korea and Japan, rear-mounted convex mirrors are used on small school buses, short delivery trucks, and some multipurpose vehicles (*e.g.,* SUVs) to allow drivers to view areas behind a vehicle.

Generally, drivers use rear-mounted convex look-down mirrors to view the area behind a vehicle by looking directly at the mirror or by viewing them indirectly through their reflection in the interior rearview mirror. Cross-view mirrors also may be viewed either directly or indirectly through the interior rearview mirror. For a rear convex corner mirror, which is not in the driver's direct line of sight, he or she must look into the driver's side rearview mirror to view the reflection of the rear convex corner mirror.

In the ANPRM, NHTSA outlined its observations about these mirrors based on our testing conducted in 2006 and 2007.[34] [35] The fields of view for look-down mirrors examined were found to extend from the rear bumper out approximately 6 feet radially from the mirror location, while the view provided by cross-view mirrors extended further due to the mirrors' vertical orientation. Overall, our testing generally indicated that convex mirrors compress and distort the image of reflected objects in their field of view, which makes objects and pedestrians appear very narrow and difficult for the driver to discern and identify in most locations within the reflected image. These aspects of image quality worsen as the length of the vehicle increases, since for longer vehicles the mirror is further from the driver. Our testing also has indicated that because rear cross-view mirrors are positioned to show an area to the side and rear of the vehicle, they do not provide a good view of the area directly behind the vehicle (the area bounded by two imaginary planes tangent to the sides of the vehicle). As such, it is possible that a pedestrian or object located directly behind the vehicle would not be visible to the driver. Rear cross-view mirrors can help drivers see objects approaching the rear of the vehicle along a perpendicular path.

ii. Rearview Video Systems

Rearview video systems are available as both original and aftermarket equipment and permit a driver to see the area directly behind the vehicle via a visual display (*i.e.,* video screen) showing the image from a video camera mounted on the rear of the vehicle. NHTSA has observed the placement of these visual displays in a number of locations. Sometimes these displays serve the added purpose of providing a visual display for a navigation system or satellite radio. As stand-alone units, these displays have also been incorporated into the dash or into the interior rearview mirror. The video cameras installed with rearview video systems vary in field of view performance from approximately 130 to 180 degrees behind the vehicle.

Drivers use rearview video systems as an additional source of visual information complementing the views provide by the interior and exterior rearview mirrors. In a 2008 report [36] that documented NHTSA's research on drivers' use of rearview video systems, the agency asserted that proper use of a rearview video system by a driver would entail drivers beginning to back only when the rearview video system display image becomes visible and the driver has looked at the image, and that drivers should look at the display as well as the vehicle's mirrors periodically during backing rather than just taking one glance at the display at the start of the maneuver.

In the ANPRM, NHTSA summarized its 2006 research that examined three rearview video systems: One in combination with original equipment rear parking sensors, one aftermarket system combining both rearview video and parking sensor technologies, and one original equipment rearview video system.[37] [38] This examination of rearview video systems included assessment of their fields of view and their potential to provide drivers with information about obstacles behind the vehicle. Through this study, the agency observed that the rearview video systems examined provided a clear image of the area behind the vehicle in daylight and indoor lighting conditions. Rearview video systems displayed images of pedestrians or obstacles behind the vehicle to a viewable range of 23 feet or more, except for an area within 8–12 inches of the rear bumper at ground level. Systems displayed an area as wide as the rear bumper at the immediate rear of the vehicle and the view increasingly widened further out from the rear of the vehicle as a function of the video camera's viewing angle.

iii. Sensor-Based Rear Object Detection Systems

Sensor-based object detection systems are also available as aftermarket products and as original equipment. These systems use electronic sensors that transmit a signal which, if an obstacle is present in a sensor's detection field, reflects the signal back to the sensor producing a positive "detection" of the obstacle. These sensors detect objects in the vicinity of a vehicle at varying ranges depending on the technology. To date, commercially-available object detection systems have utilized short-range ultrasonic technology or longer range radar technology, although advanced infrared sensors are under development as well. Ultrasonic sensors inherently have detection performance that varies as a function of the degree of sonic reflectivity of the obstacle surface. For example, objects with a smooth surface such as plastic or metal reflect well, whereas objects with a textured surface, such as clothing, do not reflect very well. Radar sensors, which among other things can detect the water in a human's body, are better able to detect pedestrians overall, but demonstrate inconsistent detection performance for small children.

In 2006, NHTSA evaluated the object detection performance of eight sensor-

[33] Rear-mounted convex mirrors have been available on the Toyota 4Runner base model vehicle since model year 2003.

[34] 74 FR 9486.

[35] The research studies and the observations are documented in "The Ability of Rear-Mounted Convex Mirrors to Improve Rear Visibility," Enhanced Safety of Vehicles Conference 2009, Paper Number 09–0558. Since the ANPRM, NHTSA has conducted additional testing on drivers' use of rear-mounted convex mirrors, the findings of which will be discussed later in this document.

[36] Mazzae, E. N., Barickman, F. S., Baldwin, G. H. S., and Ranney, T. A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[37] 74 FR 9490.

[38] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

based original equipment and aftermarket rear parking systems.[39] Measurements included static field of view (*i.e.,* both the vehicle and test objects were static), static field of view repeatability, and dynamic detection range for different laterally moving test objects, including adult and child pedestrians. Both ultrasonic and radar sensor-based systems tested were generally inconsistent and unreliable in detecting pedestrians, particularly children, located behind the vehicle. Testing showed that, in most cases, pedestrian size affected detection performance, as adults elicited better detection response than 1- or 3-year-old children. Specifically, each system could generally detect a moving adult pedestrian (or other objects) behind a stationary vehicle; however, each system exhibited difficulty in detecting moving children. The sensor-based systems tested exhibited some degree of variability in their detection performance and patterns. Five of eight systems tested were found to exhibit maximum system response times that exceeded the 0.35 second limit set forth by the performance requirements of the International Organization for Standards (ISO) International Standard 17386[40]. NHTSA is aware that the performance of current sensor based systems can be influenced by the algorithms that are used for detection and that these systems, to date, have likely not been optimized for the detection of small children.

iv. Multi-Technology (Sensor + Video Camera) Systems

Multi-technology systems, as the term is used here, refer to the situation of more than one backing aid technology being present on a vehicle. Historically, multi-technology backing aid systems have consisted of a rearview video and sensor-based technologies being both present on the vehicle, but functioning independently of each other. Recently, integrated systems have become commercially available that use data from rear object detection sensors to provide added convenience through presentation of obstacle warnings superimposed on the rearview video system image.

It would seem reasonable to posit that such a combination system should have improved effectiveness over either technology alone. With a combined system, the sensor-based alerts could compensate for the passive rearview video technology by stimulating the driver to apply the brakes and glance at the rearview video system display to confirm the presence of an obstacle behind the vehicle (and inform the driver that the warning was not a false alarm). The intervention of the sensor-based warning should draw the driver's attention to the presence of a rear obstacle, rather than relying on the driver to look at the rearview video system display at the right moment when the obstacle is apparent.

However, this hypothesis has not proven correct. NHTSA's research to date has shown that the combination of rearview video and sensor technologies to be less effective in aiding drivers to avoid a backing crash than rearview video alone.[41] In laboratory testing of multi-technology systems' ability to detect different types of objects without interaction from a driver,[42] NHTSA found the performance of the combined technologies in detecting or displaying rear obstacles to be no better than that observed in the testing of those technologies as single-technology systems. As was the case with sensor-only systems, the sensor function of multi-technology systems have been shown to perform poorly and sporadically in detecting small children, while the rearview video component accurately displays rear obstacles located within the video camera's field of view.

v. Other Technologies

NHTSA is aware of two additional sensor technologies currently under development by manufacturers that may, one day, be used to improve a vehicle's rear visibility. The technologies include infrared-based object detection systems and video-based object recognition systems. As with other sensor systems, infrared-based systems emit a signal, which if an object is within its detection range, will bounce back and be detected by a receiver. Rear object detection via video camera uses real-time processing of the video image to identify obstacles behind the vehicle and then alert the driver of their presence. While these technology applications may eventually prove viable, because of their early stages of development and current unavailability as a production product, it is not possible at this time to assess their ability to effectively expand the visible area behind a vehicle. Also, it is anticipated that systems using such advanced technologies will not be available on vehicles for some time and will likely be more expensive than today's systems.

In addition, NHTSA has recently completed cooperative research with the Virginia Tech Transportation Institute and General Motors (GM) on Advanced Collision Avoidance Technology relating to backing incidents. The research focused on assessing the ability of more advanced technologies to mitigate backing crashes and refining a tool to assess the potential safety benefit of these prototype technologies. NHTSA expects to publish the findings of this particular research effort by the end of 2010.

B. Approaches for Improving Vehicles' Rear Visibility

In the ANPRM, NHSTA outlined three approaches that could be used to determine which vehicles would need a rear visibility countermeasure application to meet the requirements of the K. T. Safety Act:[43]

- Require improved rear visibility for all vehicles weighing 10,000 pounds or less.
- Require improved rear visibility for LTVs weighing 10,000 pounds or less.
- Require improved rear visibility for some vehicles weighing 10,000 pounds or less that do not meet a minimum rear visibility performance threshold.

The first approach would require that all vehicles have improved rear visibility sufficient to allow the driver to see a pedestrian in a specified zone behind the vehicle. The size of the zone would have a direct impact on the likely means a manufacturer could use to meet the rear visibility requirements.

The second approach would specify that all LTVs, as a vehicle class, should be required to have improved rear visibility. Crash data show that while multiple types of passenger vehicles (cars, multipurpose utility vehicles, trucks, and vans, but not LSVs and small buses) are involved in backover crashes, LTVs are statistically overrepresented in backover crash fatalities. Therefore, this alternative approach would target the class of vehicles which are disproportionately

[39] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

[40] ISO 17386:2004 Transport information and control systems—Manoeuvring Aids for Low Speed Operation (MALSO)—Performance requirements and test procedures. This standard applies to object detection devices that provide information to the driver regarding the distance to an obstacle during low-speed operation.

[41] Mazzae, E. N., Barickman, F. S., Baldwin, G. H. S., and Ranney, T. A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[42] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

[43] 74 FR 9504.

responsible for the largest portion of backover fatalities.

A third approach discussed in the ANPRM was to establish a maximum direct-view rear blind zone area limit based on size of blind zone and/or crash rate.[44] With this approach, any vehicle not meeting the minimum rear visibility threshold would be required to be equipped with a rear visibility countermeasure. Because vehicle styling engineers would have a target threshold giving them an idea of minimum "acceptable" direct rear visibility, such an approach would allow manufacturers the flexibility to modify exterior structural physical attributes of a vehicle that impact rear visibility to provide adequate rear visibility without the need for a technological countermeasure to enhance rear visibility. Based on direct-view blind zone area measurements of the current fleet, we could determine a threshold and require vehicles that do not meet the threshold to be equipped with a countermeasure. Thus, the agency suggested that it could focus application on improved rear visibility requirements for vehicles with the largest rear blind zone areas and those vehicles that are most involved in backing and backover crashes. The goal of either of these partial-fleet approaches would be to remove the unreasonable risk associated with vehicles that are highly involved in backover crashes.

C. Rear Visibility Measurement

The ANPRM also discussed a method for the measurement of a vehicle's rear blind zone area.[45] If a maximum direct-view rear blind zone area threshold were to be used to establish the need for a vehicle to have improved rear visibility, its rear visibility characteristics would need to be measured and that vehicle's direct-view rear visibility and rear blind zone areas would need to be calculated. Therefore, a rear visibility measurement procedure would need to be developed. In the ANPRM, the agency identified existing measurement procedures, such as those by the Society of Automotive Engineers[46] and Consumers Union[47] and addressed advantages and disadvantages of the different identified methods. The ANPRM summarized NHTSA's 2007 effort to measure rear visibility of a set of vehicles using drivers and outlined the potential for variability inherent in tests involving human subjects.[48] Lastly, the ANPRM introduced a new measurement procedure developed by NHTSA that replaced the human driver previously used in rear visibility measurements with a laser-based fixture.[49] The enhanced procedure approximated the direct rear visibility of a vehicle for a 50th percentile male driver using a fixture that incorporated two laser pointing devices to simulate a driver's line of sight. One laser pointing device was positioned at the midpoint of a 50th percentile male's eyes when looking rearward over his left shoulder and the other device was placed at the midpoint of a 50th percentile male's eyes when looking rearward over his right shoulder during backing. Data documenting the high degree of repeatability of this test procedure were provided, as well as sample results. Additional aspects of the measurement procedure were summarized including size of the field over which measurements were made, coarseness of the test grid, and test object height.

D. Possible Countermeasure Performance Specifications

The ANPRM also discussed possible countermeasure performance specifications.[50] This included possible areas of required countermeasure coverage behind the vehicle, as well as various characteristics of a visual display, and system performance criteria. Visual display characteristics noted as being important included display size and location, response time, and various aspects of image quality for a video image display. In addition, possible video camera requirements were also noted, such as low light performance specifications.

The ANPRM discussed one basis for assertion of an appropriate countermeasure coverage area that used the results of a Monte Carlo simulation that examined backover crash risk as a function of a pedestrian's location behind a vehicle, as discussed in Section II.C.iv.[51] The area of critical risk was then used to define an area behind a vehicle that must be visible to the driver during a backing maneuver. Based on the Monte Carlo simulation results, an area over which the test object should be visible could be defined to include an area 10 feet wide at the vehicle's rear bumper that widens symmetrically to width of 20 feet at a distance of approximately 6 feet aft of the rear bumper. The width of the area increased along diagonal lines of 45 degrees with respect to the vertical plane of the vehicle's rear bumper and extending outward from the vehicle's rear corners. The maximum longitudinal range of a possible required visible area noted in the ANPRM was 40 feet.

E. Summary of Comments Received

NHTSA received comments from a total of 37 entities in response to the ANPRM, as well as one comment specifically directed at the Preliminary Regulatory Impact Analysis. These comments came from industry associations, automotive and equipment manufacturers, safety advocacy organizations, and individuals. Industry associations submitting comments included the Alliance of Automotive Manufacturers (AAM), the Association of International Automobile Manufacturers (AIAM), the Automotive Occupant Restraints Council (AORC), and the Motor & Equipment Manufacturers Association (MEMA). Vehicle manufacturers submitting comments included Ford, General Motors (GM), Honda, Mercedes-Benz USA, and Nissan, as well as Blue Bird, a manufacturer of buses. Several equipment manufacturers also submitted comments, including Continental, Delphi, Gentex, Magna, Sony, and Takata. Several companies focused on backing aid products specifically, included Ackton, a manufacturer of automotive parking sensors; Echomaster Obstacle Detection Technologies; Rosco Vision Systems, a maker of vision enhancement systems; and Sense Technologies, a manufacturer of aftermarket automotive mirror and radar-based sensor systems. Organizations submitting comments included the Advocates for Highway and Auto Safety, Consumers Union, Insurance Institute for Highway Safety (IIHS), and Kids and Cars. Finally, 14 individuals commented on the ANPRM, and their points and suggestions are addressed as well.

Because the ANPRM had an extremely broad scope, the comments addressed an extremely wide variety of issues and provided a large amount of information. Therefore, we have attempted to organize the comments received along some of the main issues, such as a blind zone area basis for determination of countermeasure need, countermeasure application based on vehicle type, and the adoption of convex driver's-side mirrors. Additionally, the ANPRM contained 43

[44] 74 FR 9504.

[45] 74 FR 9506.

[46] Society of Automotive Engineers, Surface Vehicle Recommended Practice: Describing and Measuring the Driver's Field of View. SAE J1050, Jan. 2003.

[47] Consumer Reports (August, 2006). Blind-zone measurements. *http://www.consumerreports.org/cro/cars/car-safety/car-safety-reviews/mind-that-blind-spot-1005/overview/*. Accessed 9/2/2009.

[48] 74 FR 9496.

[49] 74 FR 9507.

[50] 74 FR 9512.

[51] 74 FR 9484.

distinct questions, to which some commenters added appendices addressing individual questions specifically, in addition to their general comments. Because of the breadth of those questions, they are addressed separately in Section F below.

i. Measurement of Rear Blind Zone Area and Its Use as a Basis for Determination of Countermeasure Need

Numerous commenters addressed the issue of direct visibility and the significance of a vehicle's blind zone.[52] As stated above, identifying, measuring, and limiting blind zones was one of the issues discussed in the ANPRM. The document solicited comments on several issues relating to blind zones, including their significance relative to backover crashes, areas of the blind zone that could be considered more or less important for safety, and how they should be measured. The following summarizes the comments received on these issues.

The first issue related to the area to be measured to determine a vehicle's blind zone. Delphi questioned the use of a 50-foot square blind zone area, stating that it combined high- and low-risk areas together. It also stated that mandating particular blind zones or direct visibility requirements could impose severe limitations on vehicle styling. Furthermore, the commenter suggested that a maximum blind zone area approach to rear visibility may not be as effective in reducing backover crashes as hoped under real-world conditions, as passengers, head restraints, cargo, *etc.,* would obstruct the driver's direct view to the rear of the visibility in any event.

AORC stated that it was against a "zero blind zone" requirement, arguing that it would create an extremely limiting requirement vehicle styling. To this end, the AORC recommended that a rear visibility countermeasure should be required to detect the presence of objects that are similar to standing children beginning 0.25 meters (0.82 ft) aft of the rear bumper and extending outward to a minimum of 3.0 meters (9.84 ft). IIHS strongly urged the agency to consider a requirement that would eliminate a vehicle's rear blind zone entirely. IIHS further suggested that it could be a good idea to augment an improved rear visibility requirement with a minimum requirement for direct visibility, stating that it is desirable to preclude vehicle design choices that result unnecessarily small directly viewable rear areas, to account for situations when video cameras are inoperative.

In its comments, the AAM recommended that NHTSA define the area directly behind the vehicle into two zones, called the "reaction subzone" and the "reverse obscuration subzone." The AAM defined the reaction subzone as extending from the rear of the vehicle to a point 4.1 meters rearward. According to the AAM, this distance is "the product of the average backing speed of 1.66 meters per second (5.49 feet per second) and the mean perception response time between detection by a driver of a pedestrian and brake application of 2.5 seconds." The reverse obscuration subzone, behind that, extends to the point at which a test object (representative of an 18-month old child) first becomes visible in the interior mirror, which would vary by vehicle. The AAM did not specifically recommend what to require with regard to these zones.

Several commenters provided suggestions as to how to measure the blind zone, specifically, the height of the test target, and the position of the driver's "eyepoint" from which the target must be seen. In order to determine the size of the target, GM analyzed the age and height of children involved in backover crashes, noting that of the 41 SCI cases available at that time that involving children under 5 years old, 33 involved children 18 months and older. Based on that information, GM suggested that a height of 32 inches for any rear visibility test target would be justified, which it stated was the 50th percentile height of an 18-month-old child. GM stated that all the victims in the first 56 SCI backover cases would have been visible if the vehicle had permitted the driver to see the area at this height.

Blue Bird stated that field of view mapping is a time and effort-consuming enterprise, and that the company does not believe that the magnitude of the differences measured at multiple eyepoints would justify that effort. Instead, it stated that a single eyepoint should be used.

Kids and Cars stated that eyepoints should be based on smaller statured persons or dummies, and that NHTSA should not use eyepoints based on a 95th percentile male. With similar concern for smaller-statured drivers, Advocates for Highway and Auto Safety indicated their concern that any attempt to expand rear visibility through improvements to direct visibility may not sufficiently accommodate 5th percentile females and other drivers of very small stature.

Sony stated that NHTSA cannot satisfy the requirements of the Act solely by mandating limits on vehicle rear blind zones, since such an approach would only mitigate a portion of the total area of blind zones, and would do little to mitigate the ultimate danger of backover crashes.

In addition, numerous commenters provided more detail in response to specific NHTSA questions, which are discussed in Section F below.

ii. Application of Countermeasures Among Vehicle Types

One significant issue discussed in the ANPRM was the concept that different types of vehicles could be subject to different countermeasure requirements. For example, noting the higher proportion of fatalities in backover crashes involving LTVs, the agency presented the option of requiring only those vehicles to have a rear visibility countermeasure. Many commenters offered their thoughts on which vehicles should be equipped with countermeasures.

Sony commented that the Act permits NHTSA to "prescribe different requirements for different types of motor vehicles," but does not permit a total or partial exemption of a particular class of vehicles, or a percentage of a particular class of vehicles, from rear visibility requirements. Sony further stated that limiting the rear blind zone visibility requirements to LTVs ignores the fact that passenger cars account for 26 percent of backover deaths and 54 percent of backover injuries, and that these percentages will likely increase given the relative decline of LTV sales across the market. They also pointed out that the line between passenger cars and LTVs has blurred to the point where the weight and/or height of a particular vehicle does not necessarily correspond to rear visibility.

Safety organizations generally commented against limiting countermeasures to certain vehicle types. Kids and Cars stated that all vehicles must be addressed in order to prevent backover injuries and fatalities, stating that even one car with a large blind zone should indicate the need for the regulation to cover all vehicle types. Similarly, IIHS and Consumers Union both supported uniform requirements across light vehicle classes.

Some equipment manufacturers of rear visibility enhancement products also submitted comments recommending that rear visibility countermeasures not be limited to certain vehicle types, but be applied to

[52] We note that this is different than what many informally call a "blind spot," a term used to describe an area to the side of the car where people may not be able to see a vehicle when changing lanes.

all vehicles. Delphi and Magna stated that it believes the backover problem is widespread enough that countermeasures should not be limited to any particular class of vehicles. Similarly, Ackton suggested that countermeasures should not be limited to a certain vehicle class and also raised the issue that trailers should be equipped with sensor systems as well.

Several automakers commented in favor of limiting any rear visibility improvement to LTVs. Mercedes suggested that if the agency believes that advanced countermeasures are required for the portion of the vehicle fleet that is statistically overrepresented in backover crashes (*i.e.,* LTVs), then NHTSA should require those countermeasures only for those types of vehicles. Mercedes stated that those advanced countermeasures are particularly well-suited for higher-belt-line vehicles, and that the limitation would make the requirement more cost-effective. Honda also commented that rear visibility performance requirements should be instituted for only those vehicles with the highest rates of backover incidents, although it also suggested that NHTSA should actively monitor the data for all vehicle types so that it can consider broader application of the requirements based on the safety need.

Automakers Nissan and GM both recommended that a maximum blind zone area approach be used to determine whether a vehicle warrants improved rear visibility rather than applying the new requirements by vehicle type.

NHTSA received one comment, from Blue Bird, asserting that buses should not be subject to improved rear visibility requirements. First, Blue Bird noted that the backover statistics presented by NHTSA did not show any apparent backover crashes caused by buses. Second, it stated that most drivers of buses are required to obtain commercial driver licenses (CDLs), and that these drivers are subjected to additional training, limiting the chances of backover crashes. The company also stated that mirrors, in any of several configurations, would not be able to provide an adequate field of view to the rear of a bus, and would present exceptional mounting difficulties. Additionally, because many buses (such as school buses) are not equipped with navigation screens, the costs for installing rearview video systems in these vehicles would be higher than the average for passenger vehicles.

iii. Use and Efficacy of Rear-Mounted Mirror Systems and Convex Driver's-Side Mirrors

In the ANPRM, NHTSA presented data on the ability of mirrors to display usable images of the area behind a vehicle.[53] Several commenters provided information and opinions regarding mirrors. Furthermore, several manufacturers suggested that, due to the geometry of a number of backover scenarios analyzed, convex driver's-side mirrors could be an effective way to prevent backover crashes. We have summarized these comments below.

Several commenters, including Consumers Union, Kids and Cars, IIHS, Blue Bird, Magna, and Nissan agreed with NHTSA's preliminary evaluation of rear-mounted mirror systems in Section V of the ANPRM, stating that they are generally not useful in aiding a driver of a backing vehicle to visually detect pedestrians, particularly children, located behind the vehicle. Based on the information presented in the ANPRM, the Advocates for Highway and Auto Safety concluded that the coverage provided by rear-mounted convex mirrors is inadequate for the purpose of providing drivers with a sufficient rearward field of view to identify pedestrians and avoid backover crashes.

According to the AAM and other commenters, rear-mounted convex mirrors are installed as backing/parking aids to help the driver locate fixed objects behind and near the rear bumper.

One commenter, Sense Technologies, which manufactures rear cross-view mirrors, suggested that NHTSA perform additional research into the types of backover crashes and backing crashes that could be prevented with rear-mounted cross-view mirrors, which would enable drivers of vehicles to see objects approaching from the sides of a vehicle, which are frequently obscured in parking lots. It also suggested that cross-view mirrors could be mounted on the rear of passenger cars (unlike "look down" mirrors, which are usually only mounted on LTVs).

One issue mentioned by multiple commenters concerned the European standard for mirror performance, ECE R46. Several commenters suggested that replacing the side mirror requirement currently in FMVSS No. 111 with the convex driver's-side mirror specifications in ECE R46 would help drivers be better able to detect pedestrians before they enter the path of the vehicle, if they are approaching from the sides. We note that ECE R46 allows either flat or convex driver's-side mirrors, provided they meet the minimum field of view requirements. It was unclear to the agency whether some commenters were suggesting mandating convex mirrors (and disallowing current flat mirrors) or simply allow convex mirrors as an option.

The AAM recommended adopting ECE R46 convex driver's-side mirror requirements as a means to prevent a substantial number of backover crashes. It pointed to a number of purported benefits, such as an increase in viewing coverage, reduced glare, and driver preference for non-planar mirrors. Like other commenters, the AAM also discussed NHTSA's data that showed that a number of backover crashes resulted from side incursions. They stated that convex side mirrors could help the driver see these pedestrians earlier than flat mirrors. The AAM also cited research indicating that these mirrors would provide a 22.9 percent reduction in lane change crashes.

Mercedes commented that, given that many SCI cases indicated the children struck by backing vehicles moved into the path of the vehicle from either the left or right, it supported AAM's recommendation to adopt ECE R46 requirements for convex driver's-side exterior mirrors, as they substantially increase the driver's field of view to the sides and rear of a given vehicle, thus increasing the time that a moving pedestrian will be visible in the mirror and providing greater opportunity for the driver to detect them.

Regarding convex mirrors, Advocates for Highway and Auto Safety agreed that they may provide a wider field of view than that available with current rearview mirrors. However, they pointed out that convex mirrors may require drivers, even those with experience using convex mirrors, to interpret the altered view in order to understand precisely what is being conveyed regarding pedestrians and other objects present in the vehicle path.

iv. Use of Monte Carlo Simulation of Backover Crash Risk for Development of a Required Countermeasure Coverage Area

GM raised some questions about the Monte Carlo simulation presented in the ANPRM, which calculated the backover risk for pedestrians as a function of their location relative to a backing vehicle. GM noted that while the Monte Carlo simulation calculated the risk of a backing vehicle striking a pedestrian at certain locations behind the vehicle, it did not factor in the probability that the pedestrian would actually be located in

[53] 74 FR 9486.

that spot (*e.g.,* even though a child six inches from the rear edge of the vehicle is almost certain to be hit, the chance of the child being actually located there is comparatively low). Considering that, according to GM's analysis, the areas indicated as high-risk in the Monte Carlo simulation may not correlate particularly well with the overall backover crash risk.

On the other hand, Consumers Union praised the Monte Carlo simulation, and suggested using it as the basis for determining what a rearview video system should be able to detect, recommending that it detect any area where the risk factor was 0.10 or higher in that analysis.

v. Use and Efficacy of Sensor-Based Systems

The issue of the use and efficacy of sensor systems, that is, how they are designed and how well they function to prevent backovers was discussed by many commenters. These comments addressed three main issues. The first was the purpose for which sensors are currently designed, which are as parking aids, rather than backover prevention aids. Commenters also discussed the capabilities of sensors to detect various obstacles, as well as the cost of production and implementation, and provided recommendations for test objects. We have summarized the comments below.

One major issue addressed by numerous commenters was the assertion that NHTSA's analysis relating to sensor system effectiveness was flawed. Commenters felt that by testing currently available sensors, we were testing systems that were designed to detect large, dense or highly reflective, stationary objects (such as parked cars, walls, *etc.*) rather than smaller, lighter, and mobile objects like pedestrians. Because of this discrepancy, commenters suggested that NHTSA's testing of sensors may have led to artificially low estimates of system effectiveness.

Delphi questioned whether NHTSA's effectiveness numbers were accurate. The company stated that NHTSA's analysis of sensor effectiveness, which showed that sensor systems had a 39 percent detection rate and that a combination sensor/video system had a 15 percent driver performance result, should be used carefully because the sensors were not designed to detect children. Instead, Delphi stated that current OEM sensor systems are designed to the ISO 17386 standard,[54] which asserts performance requirements for object detection devices that provide information to the driver regarding the distance to an obstacle during low-speed operation. This ISO standard specifies a PVC cylinder for use in measuring systems' detection performance, and does not require the detection of objects low to the ground so that systems are permitted to avoid detecting curbs.

Delphi also provided extensive comments regarding sensor-based systems in terms of their abilities and how they may best be used. It suggested that sensors are an important addition to rearview video systems, as drivers need prompting in order to glance at the screen when an obstruction appears. The company also suggested that a sensor system with varying warnings, dependent on the calculated time-to-collision, could provide drivers with additional information that could be used to prevent backover crashes. Delphi stated that radar sensors are more efficient at detecting children than ultrasonic sensors, and can detect targets at greater ranges. With regard to test targets for sensor systems, it commented that any test target should be chosen to provide a minimum reflectivity that is representative of the smallest required detectable object (*e.g.,* 1-year-old child).

Ackton was another company that noted that current sensors are designed to the ISO 17386 standard, and are not designed to detect children. It stated that until there is a pedestrian-detection standard, many systems will not be designed to pass it, and will therefore fail to detect pedestrians. Sony also stated that current sensors are designed as parking aids and are optimized to detect hard surface objects, but that technical advances may improve the ability of such systems to detect non-occupant pedestrians.

Ackton also commented that its "New-Gen" ultrasonic technology can detect a 36-inch child at a distance of 15 feet. Along similar lines, Magna commented on two future technologies discussed in the ANPRM, infrared and video-based object recognition systems. Magna stated that these systems were in active development, and would be ready for production by 2011.

Continental commented that in the future advanced systems may be developed that respond automatically with automatic braking to avoid a backing crash without any action from the driver. It stated that in the future, systems will be able to recognize pedestrians that are in danger of being struck and automatically intervene to prevent that from happening. Continental gave no indication of the timeframe for availability of such technology.

IIHS stated that the combination of sensors' unreliability and drivers' slow and inconsistent reactions to audible warnings suggest that requiring, or even allowing, sensors in lieu of a visual backover countermeasure systems is not advisable at this time, although sensors could augment other technologies. Kids and Cars and Magna also pointed to the audible signals from sensors as a source of annoyance to many drivers, especially given the prevalence of false positives, which caused many drivers to "tune out" the warnings. However, Magna stated that if the sensor warnings were provided visually (such as on a graphical overlay), drivers would be less prone to be irritated by them and therefore less likely to ignore them.

Advocates for Highway and Auto Safety suggested for sensor-based systems that the agency consider an interlock requirement that prohibits the vehicle from being able to be moved in reverse, even after the transmission has been placed in reverse gear, until a short period after the system becomes fully operational.

vi. Use and Efficacy of Rearview Video Systems

In the ANPRM, NHTSA presented its research on rearview video systems. Commenters discussed these systems at length. In summarizing these comments, we have divided them into two general groups. The first section describes the comments relating to the general effectiveness of rearview video systems in aiding drivers to avoid backing crashes. The subsequent section summarizes the comments relating to the specific possible requirements for rearview video systems, such as camera performance, visual display characteristics, *etc.*

Many commenters, including manufacturers of video cameras, safety organizations, and individual commenters, stated that rearview video systems would be the best system to prevent backover crashes. Commenters supporting this proposition included Consumers Union, Kids and Cars, IIHS, Magna, Nissan, and Sony.

Consumers Union also supported the application of rearview video systems, noting their potential to save lives, and also asserted that their efficacy would improve as users grew more accustomed to using them in their everyday driving.

[54] ISO 17386:2004 Transport information and control systems—Manoeuvring Aids for Low Speed Operation (MALSO)—Performance requirements and test procedures. This standard applies to object detection devices that provide information to the driver regarding the distance to an obstacle during low-speed operation.

It added that it believed a rearview video system coupled with a sensor system would be the overall best system. While Consumers Union referred to NHTSA's research study as involving drivers "trained" to use rearview video systems and the other systems tested, the agency notes that all drivers who participated in the study had owned and driven the system-equipped vehicle and had driven it as their primary vehicle for at least 6 months prior to study participation, but did not receive any specific training in the use of a rearview video system.

Advocates for Highway and Auto Safety pointed out that a video image of the area behind a vehicle immediately conveys information about rear obstacles and pedestrians within the system's field of view without any need for interpretation by the driver. This quality was noted as an advantage of rearview video systems over rear-mounted convex mirrors and sensor-based systems.

Magna stated that it believes camera technology has the potential to significantly enhance safety and that a rearview video system ranks highest by far, in regard to system performance and overall effectiveness estimates. In its responses to specific questions, Magna provided some additional research showing the overall effectiveness of rearview video systems in preventing backover crashes, which is discussed in Section F below.

Sony stated that it agrees with the majority of analysis provided and the preliminary conclusions reached observations made in the ANPRM. Specifically, Sony recommended that any amendment to FMVSS No. 111 should require backover prevention technologies to detect obstacles in areas other than immediately behind the vehicle. Sony stated that rearview video systems with 180-degree video cameras would be best able to address real-world backover crash scenarios, in which a majority of pedestrians enter the vehicle's path from the side.

Nissan provided some comments on its "Around View Monitor", which provides a birds-eye (*i.e.,* overhead) view of the area around the vehicle on all four sides. The company stated that their system was designed primarily as a parking aid, and that it will have significant limitations if used to protect children. Nissan stated that rearview video technology in general is a useful parking aid, but that its utility in preventing backover crashes may be limited, because drivers must be looking at the screen in order to see a pedestrian incur into their path. Nissan drew attention to the glance behavior cited in NHTSA's research, noting that on average drivers looked at the visual display twice, or about 8–12 percent of the time. It stated that this may not be enough to detect the pedestrian in time to react, even if the driver is using the rearview video system correctly, and that driver glance behavior has a significant effect on rearview video system effectiveness. Nissan also cautioned against excessive reliance on a video-based backing aid, cautioning that if a driver is relying excessively upon rearview enhancement technology, the operator can miss seeing a person or an object positioned just outside of that field of view. Nissan also stated that it is imperative that the operator always confirm clearance of the entire path of travel, and turn around and look during a backup maneuver.

The AAM made several comments similar to those of Nissan, stating that no safety countermeasure or safety technology is completely effective. AAM stated that regardless of the technology adopted to expand a driver's field of view, the driver is ultimately responsible for the safe operation of the vehicle. AAM characterized rear visibility enhancement systems as supplemental drivers with responsibility resting on drivers to use them properly.

GM stated that its analysis showed some limited benefits may be provided by rearview video technologies, but that potential solutions will continue to be limited by driver behavior. GM stated that it agrees with NHTSA that drivers' expectations influence behavior and system effectiveness, and that further improvements in the effectiveness of rearview video technologies may be achieved by improving feedback to the driver and improving driver behavior through education.

vii. Characteristics of Rearview Video Systems

NHTSA received numerous comments relating to the specific characteristics of rearview video systems. These related to issues of camera placement, durability, and performance, as well as visual display characteristics, such as location (*i.e.,* in the dashboard, or in the rearview mirror), brightness, and the functionality of the backing image. Commenters presented extensive comments on issues such as visual display size, whether digital graphical overlays should be used, and other characteristics related to these systems. IIHS noted that there was a wide range of performance by various current rearview video systems it examined and, based on this; expect that NHTSA will need to specify performance requirements to ensure a minimum level of performance for those systems.

Several commenters, including Consumers Union and Magna, recommended that NHTSA consider inclusion of graphic overlays as part of a video-based backover countermeasure, stating that this increases a driver's ability to detect obstacles, and makes the driver more likely to use the system.

NHTSA also requested comment regarding characteristics such as video camera angle, durability, and low-light performance, as well as contrast, image response and linger time, and display size and location. Commenters provided a wide array of suggestions.

IIHS stated that some rearview video systems are much more immune to weather and road dirt contamination than others, and recommended that NHTSA specify performance requirements to ensure that systems can withstand adverse conditions.

Sony offered an observation that while adverse weather conditions can affect rearview video system performance, cameras utilized in such applications are sealed in watertight housings and mounted at a downward angle, and therefore generally protected from the elements. Sony also commented on the number of backover incidents in which victims were struck after approaching from the side of the vehicle, stating that the incidence rate was 45 percent. It stated that this indicated that wide-angle rearview video systems would best prevent backover incidents.

Magna, on the other hand, commented that in order to assure overall system affordability across the widest possible range of vehicle types and models, NHTSA should not impose specific operational requirements on rearview video systems. It noted that "anti-wetting" and "anti-soiling" techniques are known and currently implemented despite the lack of a legislative mandate.

In its comments, Gentex stated that the interior rearview mirror is an ideal location for the rearview video system visual display. Gentex stated that that location is intuitive, logical, and ergonomic, and allows the driver to maintain a "head-up" position while viewing the display and the rearview mirror simultaneously. Furthermore, it noted that drivers are already trained to look in the interior rearview mirror when reversing. Magna also commented that the interior mirror is the best location for a rearview video system visual display, noting that the display in that location is much closer to the driver's eyes. However, Magna suggested that NHTSA not prescribe

specific requirements regarding display location, image size, or other requirements, as doing so may result in unintended restrictions on technology applications.

With regard to image size, commenters submitted a number of ideas for what a minimum visual display size should be. Gentex stated that it disagreed with NHTSA's suggestion that a minimum 3.25 inch screen size might be specified. Instead, they suggested a minimum viewable display height of 1.3 inches, based on its calculation of what the human visual system can generally resolve and the mean distance between the driver's eyes and the visual display. Ford also commented on NHTSA's minimum visual display size suggestion, stating that the GM research cited by NHTSA was not designed to assess system effectiveness as a function of visual display size since it only used one in-mirror display size, and in fact concluded that rear effectiveness was not affected by image size in the scenario used. Instead, Ford suggested that GM used a 3.5 inch screen in its study because it was offered as a regular production option, and that NHTSA's reliance on GM's research was inappropriate.

In lieu of the 3.5 inch minimum visual display size, Ford suggested that an Australian regulation on screen sizes for rear visibility systems (specifically, New South Wales' Technical Specification No. 149), could be used as a model. According to Ford's comment, this regulation states that when a 600 mm test cylinder is located five meters from the rear of the vehicle, the height on the screen should be no less than 0.5 percent of the distance between the driver's eye and the visual display. The company claimed that this technique has resulted in several iterations of a 2.4 inch screen size and that they have been readily accepted by consumers.

Magna, on the other hand, referred to studies by GM and the Virginia Tech Transportation Institute indicating that a 3.5 inch visual display, mounted in the interior rearview mirror, led to the highest crash avoidance rates.

Certain commenters focused on some of the other specifications of the visual display. Image response time, or the delay between when a vehicle is shifted into reverse and the rearview image from the video camera appears, was discussed extensively by Gentex. While NHTSA had suggested a maximum of 1.25 seconds for this value, Gentex recommended 3 seconds, based on its calculations of the time needed for signal transfer, powering the camera, and the complexity of the electronics. GM supported Gentex's comments on this matter.

Gentex made two additional recommendations with regard to visual displays in its comments. The company suggested a minimum brightness of 500 candelas per square meter (cd/m^2) for the screen, as well as a minimum contrast ratio of 10:1.

Consumers Union made a number of suggestions regarding displays for rearview video systems, including that there needs to be a minimum display size and that a maximum image response time of 1 second, and a maximum linger time between 4 and 8 seconds should be required. GM recommended a maximum linger time of 10 seconds or, as an alternative, a speed-based limit in which the rearview video display would turn off when the vehicle reach a speed of 5 mph (8 kph). Based on their observations of drivers making parking maneuvers, the AAM also recommended a maximum linger time of 10 seconds, but specified an alternative speed-based value of 20 kph (12.4 mph).

Ms. Susan Auriemma, of Kids and Cars, offered a personal testimony, stating that as a user of a rearview video system with an image response time of 2–3 seconds, there is a tendency to want to proceed to back the vehicle without waiting for the image to appear.

viii. Development of a Performance-Based or Technology-Neutral Standard

Numerous commenters suggested that any NHTSA standard be performance-based and technology-neutral. These commenters generally supported the idea that the blind zone must be limited to a certain size, or that certain areas behind the vehicle should be visible, but did not want NHTSA to prescribe how these areas should be detected. Instead, these commenters stated that allowing the manufacturer to determine the means by which the required area is detectable would promote styling flexibility, technological innovation, and help to contain costs.

MEMA stated that it supported a performance-based test, stating that "it is clear that there is no one solution to mitigating backover events." It also suggested that various countermeasures can be incorporated, whether complementary or separately, to promote increases in the rear field of view.

Delphi stated that there would be no reason to not grant compliance credits to vehicle manufacturers who choose any system, mirrors, sensors, or video, which detects the required areas behind a vehicle.

AIAM, in its comments, pointed out specific problems with all three countermeasure technologies, and then suggested that some of the issues would present a greater challenge for certain classes of vehicles. In light of that, it suggested that performance-based requirements would allow vehicle manufacturers to achieve the best match of technical approach for each of their vehicle models.

AORC stated that it believes that the regulation should allow for the enhancement of rear visibility via the implementation of rearview video systems or the use of sensor input. It stated that these systems should be subject to a pure performance requirement, and must able to detect children from a distance of 0.25–3.00 meters behind the vehicle.

Kids and Cars urged the agency to not only set the highest feasible rear visibility standard, but to also allow new innovative product designs that will evolve as technology matures.

ix. Other Issues Addressed in Comments

This section summarizes comments related to ancillary issues regarding rear visibility. For example, several commenters suggested that NHTSA design a performance rating system for rear visibility, issuing it in addition to, or in lieu of, a countermeasure performance requirement. Alternatively, suggestions for driver education proposals were made. Some commenters also discussed the rate at which any rear visibility standard be phased in.

Several commenters suggested that a performance rating system be developed, to provide consumers information about the rearward visibility characteristics of various vehicles. Delphi stated that a performance rating system would have the effect of giving consumers the necessary facts to purchase vehicles that offer the best choice of safety and value, and would encourage continued innovation in backover avoidance technology.

AORC suggested a performance rating system for rear visibility enhancement systems, similar to ones used in NHTSA's New Car Assessment Program, as it could give consumers information relating to vehicle purchase. This idea was also supported by Magna, which recommended a five-star Federal safety rating program.

The AAM recommended that NHTSA provide information to consumers about proper backing procedures, as well as the capabilities and limitations of rear visibility countermeasures.

Another remark by Kids and Cars member, Ms. Susan Auriemma, focused on "proper backing procedures." Specifically, the commenter stated that research is needed to define what proper use of a rearview video system is in terms of how often a driver should look at a rearview image, and whether a driver should also look directly behind the vehicle and at the mirrors. Ms. Auriemma also questioned whether the sample size used by NHTSA, 37 drivers, was large enough to make definitive conclusions regarding backing behavior and rearview video system use.

Several commenters requested that the phase-in period for rear visibility system requirements be extended beyond the four-year period mandated in the K.T. Safety Act. Honda stated that in addition to the cost of the systems, there could be considerable costs if major design changes are required before vehicles are scheduled for normal redesign. The company suggested that the costs could be substantially reduced if only one or two additional years are allowed for the phase-in schedule to coincide with existing redesign plans. AIAM also suggested a six-year phase-in schedule so that changes could be implemented in accordance with vehicle redesign schedules. It also stated that small volume and limited line manufacturers should be excluded from the visibility requirements until the end of the phase-in period is reached, due to reduced access to technologies and generally longer product life cycles compared to larger manufacturers.

One comment from Sony suggested that a mechanism to reduce costs would be to eliminate the U.S. import tariff on rearview video camera imports, which currently stand at 2.1 percent. Kids and Cars suggested that NHTSA also consider proposing a "forward visibility" standard to prevent "frontovers," stating that fatalities from such accidents have increased substantially in recent years.

Finally, NHTSA received several comments from individuals relating personal experiences involving backover crashes. One anonymous commenter, who had backed over their son, recommended that backup sensors and/or rearview video systems be put in all vehicles. Ms. Shannon Campbell described a personal backover experience with a "sport utility vehicle" (SUV), and stated that it is impossible for the driver to see behind the vehicle without a rearview video system. Similarly, Mr. Donald Hampton, whose granddaughter was involved in a backover with an SUV, recommended that every new vehicle have a rearview video system, stating that an add-on video camera kit costs around $100. Ms. Sharron DiMario, who son was involved in a backover with a minivan, recommended safety modifications to dramatically improve vehicle blind spots. Ms. Karena Caputo, who son was involved in a backover with a Hummer, stated that children cannot be seen behind vehicles, and that every vehicle should have some type of backup safety device. Ms. Andriann Raschdorf-Nelson, whose 16-month old son was involved in a backover with an SUV, simply applauded NHTSA's decision to make all vehicles safer for children. Ms. AnnMarie Bartlett-Pszybylski commented that she had installed a rearview video system on her vehicle after a backover incident involving her son. Mr. David Sarota requested that NHTSA promulgate a Federal regulation after witnessing a near-backover involving a small truck. Finally, Mr. Paul Faragher Anthony whose 23-month-old son was the victim of a near-fatal backover incident involving a van equipped with a rear-mounted convex mirror, which he stated "do nothing to improve the field of view downward, where a toddler is likely to be."

Kids and Cars discussed the specifics of backover crashes. It stated that parents and relatives have a greater vulnerability to backover crashes because they are involved in more backing situations when young children are present. Kids and Cars stated that in all the backover cases they documented, the parent or relative driving the vehicle was unaware the child was behind the vehicle.

x. Suggested Alternative Proposals

In their comments, several commenters laid out suggested proposals for addressing the problem of backover crashes. Suggestions were received from GM, AORC, Mr. Louis Martinez, and the AAM. We have summarized these alternative proposals below.

GM suggested a two-part alternative proposal. First, GM suggested that NHTSA expand the required field of view to the sides and rear of the vehicle, through establishing passenger side mirror requirements and expanding the existing driver side requirements. Second, GM suggested that all vehicles meet a maximum blind zone requirement, using an alternative "indirect" measurement of rear visibility. GM proposed an indirect threshold limit of 100 to 125 square feet, which it indicated would correspond to a direct-view blind zone area of approximately 400–500 square feet using the methods described by NHTSA in the ANPRM. Vehicles that did not meet this threshold indirect visibility requirement would need additional rear vision enhancements, such as video cameras, to meet the requirements.

The AAM suggested a three-part alternative proposal in its comments. First, it suggested that NHTSA adopt European mirror requirements (ECE R46) for both driver and passenger side convex mirrors, for reasons described above. Second, it suggested NHTSA develop performance-based criteria to identify vehicles that may require additional countermeasures. Third, it recommended that NHTSA increase consumer information about capabilities and available technology intended to enhance rear detection capability and enhance driver education.

AORC suggested dividing the area behind the vehicle into a "warning zone," extending three meters behind a vehicle, and an "observation zone," extending an indefinite distance behind the warning zone. Video cameras and sensors would be required to perform different warning and obstacle-avoidance tasks for objects within the two zones, and would be tested using a 0.75 meter (2.5 ft) tall object with human form approximation.

Mr. Louis Martinez submitted a description of a "three-piece interior rear view mirror assembly for vehicles." According to the commenter, this planar mirror assembly would enable driver to view more areas to the sides and rear of the vehicle without having to turn his or her head or adjust the mirrors.

xi. Costs and Benefits

Commenters also provided information which they stated could be used to develop the costs and benefits of the agency's rear visibility proposal.

Consumers Union stated that it believes the cost of rearview video systems, cited in the ANPRM, were too high, as they related to stand alone options. They suggested that the true cost to the OEM is less than $100. Consumers Union did not cite a source for this figure.

The Advocates for Highway and Auto Safety stated that the safety benefits noted in the ANPRM are in accord with project benefits for other NHTSA safety rules, such as the agency's recent upgrade of the roof crush resistance standard. The Advocates also posited that the benefits eventual savings in backover incidents may actually prove to be more effective than the roof crush rule.

Magna stated that it believed the costs of rearview video systems, as cited by NHTSA, were on the high end of the spectrum. It added that as the number of automotive video cameras increases,

their price will decline. Magna did not provide any indication of how low the price may get.

Ms. Susan Auriemma of Kids and Cars said that NHTSA should not be limited by monetary considerations in determining standards that may save children, stating that the value of the life of a child should not be equal to that of a 70-year old adult.

F. Questions Posed and Summary Response

NHTSA asked a series of 43 questions in the ANPRM on a wide variety of topics. In this section, we have reprinted the questions and grouped the significant responses by topic. Because of some of the information we received and further research we undertook subsequent to the ANPRM publication, some of the questions we asked no longer have significant bearing on the proposal (such as questions about methodologies for measuring blind zone size), but we have summarized the responses for the sake of completeness. Because several commenters separated their general comments from their specific responses to NHTSA's inquiries, we have summarized those responses separately. Note that this section contains only responses from those commenters who elected to explicitly respond to each or a subset of questions. Comments that related to questions asked, but were included in the body of the text, are addressed above.

i. Technologies for Improving Rear Visibility

The first series of questions was related to issues regarding the three main technological solutions—mirrors, sensors, and rearview video systems. NHTSA was interested in collecting information on the effectiveness, characteristics, and implementation of these technologies.

Question 1: While the objective to "expand the required field of view to enable the driver of a motor vehicle to detect areas behind" the vehicle implies enhancement of what a driver can visually see behind a vehicle, the language of the K.T. Safety Act also mentions that the "standard may be met by the provision of additional mirror, sensors, cameras, or other technology." NHTSA seeks comment with regard to the ability of object detection sensor technology to improve visibility and thereby comply with the requirements of the Act.

Responses: The commenters generally did not address the question of whether object detection sensor technology was literally capable of expanding the driver's view of the area immediately behind his or her vehicle, as opposed to increasing the driver's awareness of objects within that area.[55] They focused instead on the performance of that technology.

NHTSA received mixed views about its performance, with industry groups, GM, and equipment manufacturers including Ackton, Continental, Delphi, and Magna requesting that the agency make any requirements as technology-neutral as possible, so as to allow innovation and technological improvements, while others agreed with NHTSA's tentative thinking in the ANPRM that sensor technology may not function effectively in preventing backover crashes.

GM and Delphi said any technology is better than none, while Sony and Consumers Union recommended that rearview video may provide a better margin of safety with regard to backover crashes. GM and the AAM responded by saying that any technology that can provide a view of the rear of the vehicle should be permitted to comply with a rear visibility requirement. AAM added that given drivers' tendency to rely on mirrors once the backing maneuver starts, requirements should not preclude any technology.

Specifically in regard to sensor-based systems, Ackton stated that their product uses "New-Gen" ultrasonic technology that can detect another vehicle at a range of up to 30 feet and can detect a 36-inch-tall child at a range of up to 15 feet. On the other hand, Consumers Union and Nissan stated that they agreed with NHTSA's findings that sensor-based systems are inconsistent and unreliable in detection pedestrians, particularly small children, behind a vehicle. Nissan also commented that it generally agrees with NHTSA's evaluation of sensor-based systems and believes that they are generally unreliable in detecting pedestrians, particularly children. Nissan also stated that sensor-based "systems may not be able to detect children or detect them in time for the driver to react." Magna stated that it concurred with NHTSA's finding that sensor-based systems are inconsistent and unreliable in detecting children.

Ms. Susan Auriemma stated that false alarms occur frequently with sensors, and that they would be unhelpful in situations where the vehicle was near known obstructions, such as in garages, therefore recommending that sensors not be permitted to meet the requirement. Furthermore, she added that a malfunctioning sensor system could impart a false sense of security to a driver, who hearing no warning, might assume the path is clear.

Question 2: What specific customer feedback have OEMs received regarding vehicle equipped with rear parking sensor systems? Have any component reliability or maintenance issues arisen? Is sensor performance affected by any aspect of ambient weather conditions?

Responses: GM responded to this question by stating that the parking sensor systems have been generally reliable. AAM stated that weather, dirt, snow, harsh sunlight, intense cold, or high levels of ambient noise can reduce sensor performance. Mercedes also responded to this question, but with information it wished to keep confidential. Kids and Cars stated that it believes that people tend to "tune out" the sound of a sensor as they back out of a garage, as it can register a false positive from the garage walls, which would lessen its efficiency in preventing backover crashes.

Question 3: What specific customer feedback have OEMs received regarding vehicles equipped with rearview video systems? Have any rearview video system component or reliability issues arisen?

Responses: NHTSA received several responses to this question, indicating that most rearview video systems demonstrated good reliability. Other commenters pointed out that the systems have not been installed on vehicles for significant periods of time, so the data regarding their reliability are limited. GM stated that they have generally received favorable customer feedback regarding the performance and operation of their rearview video systems, but have had some negative comments regarding the camera lens needing to be periodically cleaned to remove contaminants. Magna stated that consumers gave positive feedback to the following features in rearview video systems: A wide-angle field of view, electronic image distortion reduction, graphical overlays, and interior mirror screen locations. Furthermore, Magna commented that it was not aware of component reliability problems in excess of what is normally seen in automotive systems. Rosco added that audio-enhanced video systems were positively received by customers. Sony

[55] As noted near the beginning of this document, the inclusion of sensors in this sentence as a "technology to expand the driver's field of view" suggests that "expand the required field of view" should not be read in the literal or natural way as meaning the driver must be able to *see* more of the area behind the vehicle. A literal or natural reading would make the reference to sensors superfluous, violating a basic canon of statutory interpretation. Instead, it seems that language could be read as meaning the driver must be able to *monitor,* visually or otherwise, an expanded area.

stated that video camera design for vehicles focuses on reliability, with particular attention to water resistance, vibration susceptibility, EMI sensitivity, and scratch resistance, and stated that the number of warranty returns for its video cameras were low.

Kids and Cars commented that 85 percent of individuals with these systems felt the systems were effective or very effective, and Ms. Auriemma noted a personal experience where a rearview video system had functioned for several years without malfunctioning.

Question 4: What are the performance and usability characteristics of rearview video systems and rear-mounted convex mirrors in low light (*e.g.,* nighttime) conditions?

Responses: In general, commenters including Nissan, GM, and Sony, seemed confident that, combined with backup lamps (required by FMVSS No. 108), rearview video systems and mirrors would provide a sufficiently visible image in low light conditions. Ms. Auriemma commented that her rearview video system works well under low light conditions. One commenter did point out that sensors, unlike those other systems, would not be affected by low ambient light conditions. Magna stated that performance depends, in part, on the luminous intensity of the tail lamps and backup lamps, but that low-light performance of current systems does improve rear visibility. Rosco stated that to improve nighttime performance, it incorporates infrared and audio technology into its rearview video systems.

Regarding specific performance information, GM stated that its rearview video system provide an image in 3 lux lighting conditions. While Sony indicated that their current video cameras operate in conditions as low as 1 lux, they recommended 5 lux with reverse gear and lamps engaged as an appropriate minimum light level for rearview video system compliance testing.

Question 5: Is there data available regarding consumers' and vehicle manufacturers' research regarding backing speed limitation, haptic feedback to the driver, or use of automatic braking?

Responses: Commenters, such as GM, indicated that these systems have not been applied to backing conditions. However, Magna indicated that some technologies have been applied in certain vehicles, and that haptic feedback alerts can be effective in capturing the driver's attention. The Alliance added that a review of the SCI cases indicates that excessive backing speed was not a primary risk factor in backover incidents, but Nissan stated that research is being conducted, and that it expects that performance of backover countermeasures will improve when used in combination with a reduction in backing speeds.

Question 6: What types of rear visibility countermeasures are anticipated to be implemented in the vehicle fleet through the 2012 timeframe?

Responses: Without giving specific numbers, commenters did indicate that they expect rearview video systems to be installed on an increasing percentage of their fleets. The AAM stated that the same technologies employed today will likely be used in 2012. Nissan stated that it will continue to offer as parking systems a rearview video system, as well as its Around View Monitor system. Honda commented that rearview video systems are currently on Honda and Acura SUVs, as well as the Ridgeline pickup, Odyssey minivan, and several sedans and coupes. Magna stated that it forecast around 500,000–750,000 vehicles produced in North America will be equipped with a rearview video system, and Rosco added that the evolution of technology has been moving towards rearview video systems.

Continental stated that in the future, systems will be able to recognize pedestrians that are in danger of being struck and automatically intervene to prevent that from happening. However, they gave no indication of the timeframe for availability of such technology.

Takata provided confidential comments on anticipated developments in rear detection technology, including the estimated detection capabilities of future products.

Question 7: Can rear-mounted convex mirrors be installed on light vehicles other than SUVs and vans? What is the rationale for U.S. manufacturers' choosing to install rear parking sensors and video cameras, rather than rear-mounted convex mirrors as are commonly installed on SUVs and minivans in Korea and Japan? NHTSA is particularly interested in any information on the effectiveness of rear-mounted convex mirrors in Korea and Japan.

Responses: NHTSA received a number of responses to this question. AAM, GM, and other stated that rear-mounted convex mirrors cannot feasibly be mounted on passenger cars with a sloping rear window surface. The commenters stated that these sorts of mirrors are generally considered unattractive and are not well-received by consumers. Kids and Cars also speculated that consumers may find them unappealing, or that they may strike people or objects in tight areas.

Honda provided information that these mirrors, widely used in Asia, are being phased out in favor of rearview video systems. Furthermore, it noted that these mirrors are used as parking aids, and would not be effective for obstacle avoidance in non-parking backing maneuvers. GM indicated that their research has shown that rear-mounted convex mirrors do not demonstrate any effectiveness in reducing backover crashes in the situations they examined. Rosco stated that it provides these mirrors to customers such as the United States Postal Service and other commercial package delivery services.

Question 8: NHTSA seeks any available research data documenting the effectiveness of rear convex cross-view mirrors in specifically addressing backover crashes.

Responses: GM and the Alliance stated that they were not aware of research on this topic.

Question 9: NHTSA seeks comment and data on whether it is possible to provide an expanded field of view behind the vehicle using only rear-mounted convex mirrors.

Responses: Honda and GM both responded that the utility of rear-mounted convex mirrors was limited in this regard. Honda stated that this was due to "minification" (the small image size) and distortion problems. The AAM pointed to its responses to questions I–7, II–5, and III–10 as being relevant to this question.

Question 10: NHTSA is aware of research conducted by GM that suggests that drivers respond more appropriately to visual image-based confirmation of object presence than to non-visual image based visual or auditory warnings. Is there additional research on this topic?

Responses: GM responded to this question, and reiterated the results of its research, stating that while all people that saw the rear obstacle applied the brakes, most people who simply heard a warning looked for the object first, and did not stop if they did not get visual confirmation. Magna stated drivers have a higher tolerance for visual alerts than for auditory alerts, which drivers view to be intrusive (and hence, can get tuned out). Magna said that visual overlays are best tolerated by drivers, even when they discern that the object being highlighted is benign. The Alliance pointed to its answer to question I–1 as applying to this question.

Question 11: NHTSA requests input and data on whether the provision of

graphical image-based displays (*e.g.,* such as a simplified animation depicting rear obstacles), rather than true-color, photographic visual displays would elicit a similarly favorable crash avoidance response from the driver.

Responses: In response to the questions regarding whether graphical image-based visual displays may be as effective as photographic video displays, GM reiterated its response to question VI–2 (below).

Sony commented that graphical image-based displays offer inferior protection from backover crashes when compared to true-color, photographic visual images from a rearview video system. They indicated that rearview video images provide a wider and deeper viewable area. Sony also stated that a graphical image-based display would require the driver to exit the vehicle to confirm the presence of a rear obstacle, and that if false alarm rates were high, the driver might choose to ignore the warning and not check for an obstacle.

Magna responded by emphasizing the benefits of graphical overlays superimposed on a rearview video image and urged NHTSA to consider inclusion of graphic overlays as part of a video camera-based rear backup aid. Magna indicated that they view graphical image-based displays as a supplement to a true color photographic visual image rather than a substitute for such an image.

However, the Alliance responded by stating that these technologies are in their infancy, and requesting that regulations be crafted in such a way as to not impede their development.

Question 12: To date, rearview video systems examined by NHTSA have displayed to the driver a rear-looking perspective of the area behind the vehicle. Recently introduced systems which provide the driver with a near 360-degree view of the area around the entire vehicle do so using a "birds-eye" perspective using images from four video cameras around the vehicle. During backing, it appears that, by default, this birds-eye view image is presented simultaneously along with the traditional rear-facing video camera image. NHTSA requests data or input on whether this presentation method is likely to elicit a response from the driver that is at least as favorable as that attained using traditional, rear-view image perspective, or whether this presentation is more confusing for drivers.

Responses: Nissan, which uses this technology in some of its vehicles, stated that it has not received negative customer feedback about it. The AAM again stated that such systems have only recently been introduced into the marketplace.

ii. Drivers' Use and Associated Effectiveness of Available Technologies To Mitigate Backover Crashes

These questions were posed in order to help NHTSA gain a better understanding of how technologies were being deployed and used by drivers, and to fill in gaps in research. The agency was particularly interested in any market or research studies indicating customer satisfaction and adoption of specific technologies.

Question 1: NHTSA has not conducted research to estimate a drivers' ability to avoid crashes with a backing crash countermeasure system based only on sensor technology. We request any available data documenting the effectiveness of backing crash countermeasure systems based only on sensor technology in aiding drivers in mitigating backing crashes.

Responses: AAM commented by stating that these devices have only been recently introduced into the marketplace, and that more time would be needed before results would be detectable. GM's comment referred to the results of the McLaughlin and Llaneras studies, which provided some evidence that although warnings influenced driver behavior, warnings were unreliable in terms of their ability to induce drivers to immediately brake to a complete stop. GM stated that their research has shown no additional benefit of integrated (rearview video and sensor) systems over simple rearview video alone. Kids and Cars stated that there is a common reaction for drivers to "tune out" the sensor, such as in situations where a driver is backing out of a garage.

Question 2: NHTSA has not conducted research to estimate drivers' ability to avoid crashes with a backing crash countermeasure system based on multiple, integrated technologies (*e.g.,* rear parking sensors and rearview video functions in one integrated system). We request any available objective data documenting the effectiveness of multi-technology backing crash countermeasure systems in mitigating backing crashes. We also request comment on what types of technology combinations industry may consider feasible for use in improving rear visibility.

Responses: NHTSA received a variety of responses on this issue. While AAM indicated that the technology is too new to have good effectiveness data, both GM and Nissan stated that multi-technology systems were less effective than video alone. Kids and Cars, on the other hand, commented that graphic overlays based on sensor data could improve the user experience with rearview video systems. It also stated that a sensor can alert a driver to a problem, and that a rearview video system can verify that there is an obstacle behind the vehicle. Magna stated that graphic overlays, which include fusion of ranging sensing (*i.e.,* using infrared or radar technology), already exist, and can enhance the driver's ability to judge distance/depth and to assimilate what is being displayed on the video screen.

Question 3: NHTSA requests any available data documenting the image quality of rear-mounted convex mirrors and their effectiveness in aiding drivers in preventing backing crashes.

Responses: GM responded by stating that its research indicated rear-mounted convex mirrors offered no improvement in the prevention of backover crashes. The AAM stated that it does not have data documenting their performance in preventing backover crashes.

Question 4: NHTSA requests any available additional objective research data documenting the effectiveness of sensor-based, rearview video, mirror, or combination systems that may aid in mitigating backover incidents.

Responses: Magna pointed to a variety of research studies being performed by the Virginia Tech Transportation Institute and other entities. Some conclusions it summarizes include: That good image quality is important for customer acceptance; that a 3.5 inch in-mirror display led to the highest backover avoidance rates; and that in-mirror displays were preferred by a large majority of drivers. The AAM stated that it does not have any data on these systems, and given the uncertainty associated with them, recommends that NHTSA adopt a technology-neutral regulation. GM reiterated that it had already shared its relevant findings.

Question 5: NHTSA requests information regarding mounting limitations for rear-mounted convex mirrors.

Responses: Commenters stated that they are aware of no reasonable method for attaching effective rear-mounted mirrors to vehicles like sedans, where such mirrors could not be mounted on or near the roof and provide an image of the area directly behind the vehicle. The AAM cautioned that long bracket arms would be impractical and have a negative effect on component reliability. GM also reiterated that it had not found the mirrors effective even when mountable. Honda added that it believes it is impractical to apply a rear-mounted

convex mirror to vehicles with trunk lids.

iii. Approaches for Improving Vehicles' Rear Visibility

In this section, NHTSA was presenting the regulatory concepts it could use in developing a rear detection system that would best prevent backover crashes. These ideas included the specific areas that would need to be detected by a rear visibility system, the design and possible placements of mirrors or video screens, and the ramifications of requiring certain systems (*e.g.,* the maintenance costs of video cameras). This section also contained additional questions regarding the pricing and feasibility of a variety of potential systems.

Question 1: NHTSA seeks comment on the areas behind a vehicle that may be most important to consider when improving rear visibility. Furthermore, while the distribution of visible area behind the vehicle was not considered in the blind zone area metrics (*e.g.,* rear blind zone area) discussed in this document, it may be helpful to specify some specific areas behind the vehicle that must be visible.

Responses: Commenters generally fell into two categories. Honda stated simply that the area immediately behind the vehicle's rear bumper is significant and should be addressed as a priority. Other commenters, such as AAM and GM, stated that based on a review of the SCI data, the area to the sides of the vehicle is of significant importance, since most victims intruded into the path of the backing vehicle from the sides, rather than starting from directly behind the vehicle. Rosco responded, with respect to school buses, that the area behind the bus closest to the curbside rear wheels may be the most important in order to see a child running to catch the bus.

Advocates for Highway and Auto Safety encouraged the agency to make the coverage area behind the vehicle as large as possible to provide as much time as possible for the driver to determine that a pedestrian is behind the vehicle and to take measures to prevent a crash. The approach recommended by the Advocates was to eliminate vehicles' rear blind zones entirely. They indicated that allowing the degree of rear visibility improvement to be based on the size of the particular vehicle's rear blind zone would permit countermeasures that are tailored to produce the desired result for each vehicle model and type individually.

Question 2: NHTSA invites comment as to how an actual threshold based on vehicles' rear blind zone area could be defined.

Responses: This question was asked in relation to the considered rear visibility threshold, or how big the maximum permissible blind area could be before a countermeasure was needed. Commenters provided various responses. GM offered a method of measuring a vehicle's viewable area indirectly and noted an associated threshold value of 100–125 square feet measured using a 32-inch target plane, but stated that either the direct or indirect field of view methodology could be used to determine a threshold. AAM, on the other hand, offered a suggestion relating to calculating pedestrian speed of 6 kph (3.7 mph), vehicle speed of 6 kph or less, and estimated driver perception and response time 2.5 seconds. However, no data were provided by the AAM to support the specific values. Honda stated that any specified minimum rear visibility value should be based on conclusive data to indicate a direct safety benefit that has been found to be cost-effective in light of all of the related design trade-offs. Consumers Union recommended that a threshold be established based on NHTSA's Monte Carlo analysis in which all areas with risk of 0.1 or higher are required to be visible.

Question 3: NHTSA is considering specifying a minimum portion of a vehicle's rear visibility that must be provided via direct vision (*i.e.,* without the use of mirrors or other indirect vision device). NHTSA seeks comments on this approach, such as input regarding how a minimum threshold should be specified, and how much of a vehicle's rear area should be visible via direct vision?

Responses: Commenters were generally unsupportive of the idea of a direct visibility requirement. Honda stated that it would unduly restrict vehicle design and styling, and stated that it would be a design-restrictive standard that would not enhance vehicle safety. GM commented that while there are currently no field of view requirements, most vehicles provide them, and that market demand for direct field of view would continue for the foreseeable future. The Alliance stated that direct field of view should be incorporated into FMVSS No. 111 as well as indirect field of view. Rosco was concerned that it would be impossible for some vehicles, particularly larger vehicles, to meet any direct visibility requirements.

Question 4: NHTSA requests information regarding anticipated costs for rear visibility enhancement countermeasures.

Responses: Many specific responses to this question were provided on a confidential basis, which were taken into account in the agency's cost and benefit analysis. However, Kids and Cars did comment that the agency's estimated costs were too high, and that it did not take into consideration the amount of money saved by the reduction in minor parking accidents. Nissan urged NHTSA to consider the "total cost" of implementation of any countermeasure in its cost-benefit analysis. It stated that the total cost includes equipment, research and development, software redesign, wiring, electrical architecture, instrument panels, *etc.* It also stated that the costs can be especially significant for vehicles that do not already have an integrated liquid crystal display (LCD).

Question 5: Given the increasing popularity of LCD panel televisions and likely resulting price decline, what decline in price can be anticipated for LCD displays used with rearview video systems? Will similar price reduction trends be seen for video cameras for rearview video system application?

Responses: GM suggested that substantial changes in price were not likely in the foreseeable future, although not impossible. The company stated that while it is conceivable that cost reductions will be realized, the more severe requirements for automotive LCD displays than for home applications puts them in a different category, and that cost reductions may not be realized for some time.

Question 6: NHTSA requests information on the estimated price of rear visibility enhancement countermeasures at higher sales volumes, as well as the basis for such estimates.

Responses: In response to this question, GM stated that it did not estimate that there would be any significant cost reductions. It noted that ultrasonic technology and mirrors have existed for some time, and that cost reductions are unlikely.

Question 7: NHTSA requests any available data on rearview video system maintenance frequency rates and replacement costs. How often are rearview video cameras damaged in the field?

Responses: In general, commenters suggested that the number of warranty claims on rearview video systems was low. However, it was noted that the systems are still comparatively young. GM stated that its current warranty rate for rear video systems is approximately 0.1–2.3 incidents per thousand vehicles.

Nissan stated that it is unaware of any issues that have arisen with regard to the damage rate of its systems. Mercedes provided confidential comments on this subject, which were also considered by NHTSA.

Question 8: NHTSA requests comments on which types of possible rear visibility enhancement countermeasure technologies may be considered for use on which types of vehicles. This information is important for estimating the costs of countermeasure implementation in the fleet.

Responses: This question also generated a variety of responses. GM stated that market forces are driving larger vehicles, such as SUVs and vans, to adopt rearview video systems. Rosco also suggested that larger vehicles would benefit most from having a rearview video system installed. Honda, on the other hand, suggested that rearview video systems would be better than mirrors on sedans and coupes, but with pickups, durability and tailgate placement must be considered. Finally, AAM stated that as a reasonably priced baseline, the ECE R46 mirror standard would be a good addition, and that for certain vehicles, countermeasures could supplement the mirror system. It is not clear to NHTSA whether AAM was suggesting convex mirrors should be required (and disallow current flat mirrors) or simply that convex mirrors should be allowed as an option.

Question 9: NHTSA requests information regarding available studies or data indicating the effectiveness of dashboard display-based rearview video systems and rearview mirror based rearview video systems. What are the key areas that will impact the real-world effectiveness of these systems as they become more common in the fleet?

Responses: GM suggested that as drivers grow more familiar with in-mirror and in-dash video systems as backing aids, the effectiveness of these systems will increase, and pointed to a study presented at the May 2008 Society of Automotive Engineers (SAE) Government/Industry meeting, suggesting that the rearview mirror-based displays showed more benefits for inexperienced drivers, while more experienced drivers experienced about equal benefits from each type of system. The Alliance admitted it had no data, but said it believed the same thing. Rosco made several arguments for the "integration" of dashboard and rearview mirror-based systems, namely that integration will make the display more theft resistant and help propagate other technologies.

Question 10: NHTSA requests objective data on the use, effectiveness, and cost of rear-mounted convex mirrors.

Responses: Commenters provided little new data in response to this question. GM pointed to its earlier response regarding convex mirrors, where it stated that they did not show substantial safety benefits. Additionally, AAM stated that rear-mounted convex mirrors were essentially parking aids, and would not be effective in preventing backover crashes.

iv. Options for Measuring a Vehicle's Rear Visibility

In this section, NHTSA asked a series of extremely specific questions relating to methodologies for measuring the direct rear visibility of vehicles. These questions focused on various aspects of the test procedures outlined in the ANPRM, such as how to set up the machines, what size dummies to use, and how to adjust rear head restraints so as to balance concerns between rear passenger safety and rear visibility.

Question 1: NHTSA requests comment on the use of the 50th percentile male driver size as a midpoint in terms of driver height and whether using multiple driver heights for these tests [to determine direct visibility] would cause undue hardship relative to the safety value of assessing different driver heights. Specific information regarding additional cost, if any, that would be incurred by vehicle manufacturers due to the use of different driver sizes for these different portions of FMVSS No. 111 is requested.

Responses: Commenters suggested a range of testing alternatives that could be used to measure a vehicle's direct visibility characteristics. GM stated that the 95th percentile eye-ellipse is used by manufacturers as the tool for evaluating visibility and is recognized in FMVSS No. 111, and that it would be consistent to apply that tool to determine rear visibility under the standard as well. Similarly, Nissan also recommended NHTSA investigate use of an eye-ellipse method (in accordance with the Society of Automotive Engineers Recommended Practice J941), rather than using the 50th percentile male driver's eye locations. Alternatively, Sony suggested that NHTSA "should use a worst-case-scenario driver body size when conducting rear visibility measurements, such as the 25th percentile female, or at the least correlate size with the actual size of people involved" in real backover crashes. A third alternative was suggested by AAM, which stated that the eyepoints and other incidentals of ECE R46 should be used in developing the criteria for FMVSS No. 111 visibility requirements. Honda, in its comment, did not offer a specific suggestion, but rather noted that using a variety of driver heights and eyepoints might encourage manufacturers to enlarge the mirror or change the curvature, which would add cost to the development and implementation of the system. Consumers Union stated that it did not see the need for a 95th percentile male test, as taller drivers always have a better view behind the vehicle. The organization stated that it has tested using only the 50th percentile, although testing at the eyepoint of the 5th percentile female would also be worthwhile.

Question 2: NHTSA has been using seating position settings recommended by the vehicle manufacturers for agency crash tests. For most vehicles, the vertical seat position setting recommended for seats with vertical adjustability is the lowest position. NHTSA seeks comment on whether this setting is the most suitable position for a 50th percentile male, or if a midpoint setting would be more appropriate for measuring rear visibility. NHTSA also seeks comment on whether the specific crash test seating specifications used are the most appropriate for this context.

Responses: Nissan, GM, and AAM commented in response to this question. They indicated that their responses to the previous question also applied to this issue. Honda pointed out the driver's eyepoint used affects visibility performance with rear-mounted convex mirrors, but does not affect the area behind a vehicle that is displayed by a rearview video system. Honda suggested that if a rule were to require accommodation of different driver sizes that manufacturers may modify the mirror to enlarge its size of change the radius of curvature. While Honda noted that such consideration would result in increased costs, although it did not specifically discourage this if NHTSA could show related enhanced safety benefits. Additionally, Honda stated that while the driver eyepoint is extremely relevant for direct view measurements, it would have no effect on rearview video systems.

Question 3: NHTSA seeks comment on the placements of head restraints. For example, would our test procedure result in the elimination of rear head restraints or a reduction in their size? If so, please identify the affected vehicles and explain why the rear head restraints particularly impair visibility in those vehicles. Similarly, NHTSA seeks comment on the approach to setting the

longitudinal position of all adjustable head restraints for rear visibility measurements. While longitudinally adjustable head restraints positioned fully forward may minimize the chance of whiplash, a more reasonable option for this test may be to position the head restraint at the midpoint of the longitudinal adjustment range.

Responses: NHTSA received comments on this subject from GM, Honda, Sony, and AAM. GM and Sony suggested that head restraints should be accounted for, as they contribute substantially to vehicle safety. Honda stated that head restraints should be adjusted to their lowest or stored position for rear visibility measurement, and that a direct visibility requirement should take into consideration the existence of safety features such as the center high-mounted stop lamp and rear window wiper and defogger. Honda added that if NHTSA believes the required head restraints unduly affect rear visibility, the agency should re-evaluate the recent upgrade of FMVSS No. 202a, *Head Restraints,* for which applicability took effect on September 1, 2009, and take into account rear visibility considerations. The AAM commented that the recently-updated standard FMVSS No. 202a has the effect of reducing rear visibility, and that NHTSA should adjust the head restraints to their lowest position for direct visibility testing purposes, similar to the procedures in ECE R46.

Question 4: In our testing, we found that the laser beam is difficult to detect visually. Therefore, we used the laser detector. NHTSA invites comment on the availability of other options for detecting the laser beam as used in this test that does not involve the use of an electronic laser detector.

Responses: GM and the AAM both responded to this question by noting the difficulties in using laser-based methods. GM stated that while it did not know of any better alternative methods for detecting lasers than what NHTSA described, it would likely use a math-based alternative to certify compliance. Similarly, the AAM stated that the European experience with laser measurement has generally been found to be cumbersome and that CAD-based measurement might be a more desirable option.

Question 5: For locating the laser devices at the selected driver eyepoints, is there another device besides the H-point device which can be utilized for this purpose? For simplicity, should eyepoints be indicated in a similar fashion as is currently in FMVSS No. 111 for school bus testing in which a single eyepoint is located at a specified distance from the seat cushion/seat back intersection and within a 6-inch semi-circular area?

Responses: GM recommended an alternative in which the eye location would be specified from a body fiducial point on the vehicle, similar to methods used in evaluating mirrors under the current standard. AAM questioned whether any single eye location could be representative, and if the proposed measurement method was capturing what was important for rear visibility. AAM also stated that the view in mirrors, which was not contemplated as part of the direct visibility measurement, was an important aspect to consider, especially for older drivers whose range of movement may be limited. Honda stated that it did not consider the school bus measurement method appropriate for passenger vehicles, because that measurement method was designed by contemplating the movement of a bus driver's head.

v. Options for Assessing the Performance of Rear Visibility Countermeasures

In determining a rear visibility threshold, NHTSA would first need to define a test area, from which the vehicle's viewable area could be subtracted, thereby calculating the size of the blind zone. These questions were asked in order to solicit comment on what that test area should cover, as well as other issues related to testing countermeasure performance.

Question 1: NHTSA invites comments on the need for and adequacy of the described area which rear visibility countermeasure systems may be required to detect obstacles. NHTSA is particularly interested in any available data that may suggest an alternative area behind the vehicle over which a rear visibility enhancement countermeasure should be effective? Is the described area of coverage unrealistically large? Is it adequate to mimic real world angles at which children may approach vehicles?

Responses: Many commenters used this question to comment on the number of instances in the SCI cases where the victim entered the vehicle's path from the side of the vehicle. Sony and Kids and Cars both stated that consideration should be given to areas to the sides of the vehicle, with Kids and Cars stating that all of the areas not visible directly or through side mirrors should be taken into consideration. GM and the AAM both stated that driver's-side convex mirrors, which have a wider field of view than that required by FMVSS No. 111, would help to prevent many of these incidents. Nissan commented that the area visible in side mirrors permitted in ECE R46 should be factored into the measured field of view of a vehicle. Sony stated that limiting the test are to the edges of the vehicle would fail to account for obstacles that move into the rear blind zone from the outside of the immediate rear of the vehicle. Sony suggested that the test area should account for, at a minimum, vehicle backing speed, driver reaction time, and the speed of potential obstacles.

Question 2: Is it reasonable to define the limits of the test zone such that it begins immediately behind the rear bumper for the test object defined here or should a gap be permitted before the visibility zone begins? What additional factors should the agency consider in defining the zone?

Responses: Commenters generally split into two groups in responding to this question. Some supported the idea that the test area should begin at the edge of the bumper. Kids and Cars suggested that the test area should begin at the rear bumper because when children approach a vehicle from the side, they frequently intersect the path of the vehicle close to the bumper. Rosco stated that coverage should begin at a vertical plane tangent to the rearmost surface of the rear bumper. Consumers Union also stated that they believe no gap should exist in the test zone. Nissan stated that as long as the target area size is realistic, it would be appropriate to define the limits of the test zone such that it begins immediately behind the rear bumper. GM and Honda, however, supported the idea of a gap. GM stated that as most accidents either come from the sides or from the area 3–8 meters behind the vehicle, a gap in the area would not be unreasonable. Honda also supported a small gap of 0.3 meters (1 foot), noting that if no gap were permitted, video cameras might be placed in locations that could be subject to damage in low-speed collisions, thereby increasing the cost of ownership.

Question 3: NHTSA requests comments on potentially requiring only the perimeter of the specified area to be tested for rear visibility enhancement systems. For video-based rear visibility countermeasure systems, NHTSA assumes that confirming the visibility of the test object over the perimeter of the required area is sufficient, since a system able to display the object at the perimeter of the required area should also be able to display the object at all points in between the extremities. Is this a reasonable assumption?

Responses: We received two comments in response to this specific

question. GM stated that this was not an unreasonable suggestion for a single rearview video camera, but that it did not take into consideration a system made up of multiple sensors or cameras with limited lateral scope. Rosco also questioned this assumption, stating that this did not take into account the fact that an obstruction such as a marker light could block out some portion of the rearward view. The Alliance also referenced its earlier comments on threshold detection (regarding the need for detection zones behind the vehicle), as well as the zones of coverage provided by ECE R46-compliant side mirrors.

Question 4: Would vehicles with rearview video cameras mounted away from the vehicle centerline have the ability to detect the test object over the area under consideration? Is there flexibility to relocate such off-center cameras to meet the requirements under consideration, if necessary?

Responses: This question elicited several responses. Honda and Nissan suggested that it may be possible, but that moving the position of a video camera could be expensive. They recommended allowing as much design flexibility as possible. The AAM also stated that limiting video placement to the centerline would be overly restrictive. Rosco and Sony, two equipment manufacturers, stated that current technology did allow a video camera to be mounted off-center and still be able to see the entire test area, depending on the specifics of that area.

Question 5: NHTSA seeks comment as to the availability of any mirrors that may have a field of view that encompasses a range of 50 feet, as well as the quality of image that might be provided over such a range. How different is the image size and resolution, and how significant are the differences to the mirrors' potential effectiveness?

Responses: No commenters stated they believe that rear mirrors could have an effective field of view that extends 50 feet. Nissan stated that it is difficult to describe variation in image size and resolution, as it varies by the mirror's fixed location on the vehicle body. Rosco stated that image sizes for rear cross-view mirrors become diminished beyond 30 feet. Honda questioned whether mirrors could provide a field of view that extended 50 feet back, but also questioned whether this was necessary for a typical backing maneuver.

Question 6: If a gap is permitted behind the vehicle before the visibility zone begins, how will systems prevent children who may be immediately behind a vehicle from being backed over?

Responses: In response to this question, Sony and Rosco stated that it would not be possible to prevent these backover crashes if the area in which the child was located was not visible to the driver, and reiterated that no gap in the visible zone should be permissible. GM, while acknowledging that not all backover crashes can be prevented, stated in its comments that NHTSA should focus on mitigating specific risks by focusing on the crashes that happen most often—incursions and instances where the vehicle is turning; and by focusing on vehicles that are statistically overrepresented in backover crash fatalities.

Question 7: NHTSA seeks input on what level of ambient lighting would be appropriate to specify for conduct of this compliance test. What other environmental and ambient conditions, if any, should the agency include in the test procedure?

Responses: Several commenters agreed that rear detection systems should be able to function in low light conditions. Kids and Cars and Rosco both stated that the systems should be able to work in dark conditions, while Honda and GM suggested that the low light conditions be specified with respect to the photometric requirements of backup lamps, which would be illuminated during a backing maneuver. Sony suggested that rear detection devices should function in 5 lux luminosity, which is slightly higher than the 3 lux suggested by GM.

Question 8: NHTSA invites input regarding the composition of the countermeasure compliance test object and the types of technologies that are likely to be able to provide coverage of the related test area.

Responses: In response to this query, AAM stated that based on Centers for Disease Control (CDC) growth data charts, it recommended a test object that is cylindrical with a diameter of 15 cm and a height of 82 cm. Kids and Cars, alternatively, suggested a test object with a height of 28 inches, or approximately 71 cm. Honda did not provide a specific suggestion, but noted that the test object should reflect the age and height of the people at risk and not be made of materials that cause excessive reflection or have other characteristics that could interfere with the goals of a practical, reliable, and repeatable test. Similarly, Sony stated that the test object should simulate the size of a 1-year-old child. Finally, GM noted that it provided information on this topic as part of its involvement in NHTSA-sponsored cooperative research with the Virginia Tech Transportation Institute focused on advanced crash avoidance technologies relating to backover avoidance.

vi. Options for Characterizing Rear Visibility Countermeasures

In this section, NHTSA sought comments that would provide insight into what specifications, if any, the agency should mandate for rear visibility enhancements. In the ANPRM, NHTSA noted a general lack of relevant existing industry consensus standards which could be considered in establishing regulatory performance requirements. The agency also noted it appeared there was no ongoing development to establish such consensus standards in the United States. Of particular interest were any standards that were being applied to specific types of countermeasures (such as sensors or cameras) by manufacturers. The agency also wanted to solicit comment on other considerations, such as display characteristics, durability measurements, or test procedures that could assist it in drafting a comprehensive proposed requirement. Questions posed also sought assistance in the identification of any additional parameters which the agency may need to consider specifying in a regulatory amendment to FMVSS No. 111.

Question 1: Are there any existing industry consensus standards for rear visibility enhancement systems which address the parameters outlined in this section? Are there any ongoing efforts to develop such industry consensus standards? If so, when will the standards be published?

Responses: Commenters generally agreed with NHTSA that industry consensus standards do not exist. Some commenters, such as Rosco, and Ford, cited international standards for items such as sensor performance and display requirements. Honda stated that ISO is currently reviewing performance requirements and test procedures for "Extended Range Backing Aids (ERBA)" but that this document is not directly addressing backover incidents as NHTSA did in the ANPRM and that timing-wise, the document could be balloted by ISO and issued as soon as the end of 2009 or early 2010. Nissan noted that while there is a lack of existing industry consensus standards for rear visibility enhancement systems, there does not appear to be wide variation between systems offered by different automakers due to the small number of rearview video camera suppliers.

Ford cited the initiation of updates to ECE R46 for rearview video displays and stated that while it did not support the standard in its entirety, it believes the Australian state of New South Wales' Technical Standard No.149 [56] is instructive with regard to display image. Ford stated that this standard requires a cylinder test object located 5 meters from the rear of the vehicle to have a corresponding image height on the display of at least 0.5 percent of the distance between the driver's eye and the display. For example, for a driver's eye located 800 mm from the screen, the corresponding minimum height for the image on the display would be 4mm.

The most extensive comments received were in regard to ISO 17386:2004 Transport information and control systems, Manoeuvring Aids for Low Speed Operation (MALSO). This standard contains test specifications and requirements to establish the ability of a sensor-based system to detect stationary objects, primarily in the utilization as a parking aid. Delphi stated that tests used for system certification under this standard utilize an idealized target, a PVC pole, for uniform and repeatable performance. The tests were designed to ignore the area from 0 to 25 cm above the ground to prevent detection of parking curbs, presumably to limit the number of times the system alerted the driver to their presence so that drivers would not disable the system. As noted by the AAM, ISO 17386 pertains specifically to systems designed to assist drivers in maneuvering in tight spaces, such as in low-speed parking maneuvers. The AAM further noted that the parameters addressed in the ISO standard are not relevant for pedestrian impacts, nor are the systems designed for low-speed maneuvering optimized for pedestrian detection. Delphi identified the need for a more realistic target specification to be developed, compared to the ISO standard, for sensor-based systems to be able to detect small children. Ackton stated that up to this point, ISO's MALSO standard with the PVC target pole has been the benchmark for all equipment manufacturers. However, Ackton stated that many manufacturers have created systems that "go beyond" the requirements of the ISO standard and that its own "New-Gen" system utilizes technology that allows it to detect moving objects.

The AAM stated that ISO and SAE have several standards that pertain to human-machine interface (HMI) aspects including features employed by rearview video systems and sensor-based backing aids. It noted that these standards are recommendations, rather than specifications, due to the contingent nature of most HMI parameters, which are highly influenced by the specific context and implementation in question. The AAM concluded by stating that such standards do not lend themselves for incorporation into an FMVSS for rearward visibility.

Question 2: Are there additional parameters which should be specified to define a rear visibility enhancement system? What should the minimum specified performance be for each parameter?

Responses: Gentex suggested a minimum visual display brightness of 500 cd/m^2 for in-mirror displays, as measured at room temperature and in a dark room. Its rationale was that automaker research has confirmed this to be the minimally accepted value, presumably to account for a wide possible range of ambient conditions.

Magna suggested that instead of regulating operational areas of video camera performance that NHTSA instead leave implementation to the automakers and suppliers to address to ensure overall system affordability.

Question 3: Are future rear visibility systems anticipated which may have significantly different visual display types that may require other display specification parameters?

Responses: NHTSA did not receive comments in response to this question.

IV. Analysis of ANPRM Comments and NHTSA's Tentative Conclusions

Based upon the discussion in the ANPRM and the comments received, we have grouped the various ideas for mitigating backover crashes into five distinct threads. While there are numerous variations within each concept, we believe that these five concepts contain substantially all of the potential solutions discussed. The ideas are as follows: (1) The improvement of rear visibility for all vehicles within the scope of the K.T. Safety Act; (2) the improvement of rear visibility for certain high-risk vehicle types, namely those judged to be involved in a disproportionately high number of backover crashes; (3) the improvement of rear visibility for vehicles with blind zones that exceed a threshold or cannot view areas deemed to be critical; (4) the installation of driver's-side convex mirrors; and (5) the installation of advanced technology systems, such as combinations of sensors and video cameras, automatic braking systems, or other technology. We note that when referring to improved rear visibility via a "countermeasure," the term refers to any rearview video system, sensor, or mirror, although we discuss the specific differences between those technology types in the earlier ANPRM summary and in section V below. This section contains NHTSA's analysis of the various overall approaches that could be applied to backover prevention, as well as addresses comments germane to the discussion.

Following the discussion of comments relating to the possible means for improving rear visibility and mitigating backover crashes and comments received regarding these, a discussion of comments relating to possible rear visibility system characteristics and compliance test methods is presented.

A. Application of Rear Visibility Systems Across the Light Vehicle Fleet

One approach considered by NHTSA in the ANPRM was to require that all vehicles with a GVWR of 10,000 pounds or less be subjected to improved rear visibility requirements. Going forward with a requirement for improved rear visibility for all light vehicles was an idea supported by a variety of commenters. First and foremost, safety organizations and individuals whose families had been involved in backover incidents strongly favored this alternative. In general, these commenters supported the most comprehensive possible proposal in order to achieve the maximum possible benefits, pointing out the particular tragedy that many of these incidents involved a parent or other family member injuring or killing their own children. Kids and Cars stated that all vehicles must be addressed in order to prevent backover injuries and fatalities, stating that even one car with a large blind zone should indicate the need for the regulation to cover all vehicle types. Similarly, IIHS and Consumers Union both supported uniform requirements across light vehicle classes.

Several equipment manufacturers also were in support of requiring improved rear visibility on all light vehicles. Sony commented that the Act permits NHTSA to "prescribe different requirements for different types of motor vehicles," but does not permit a total or partial exemption of a particular class of vehicles, or a percentage of a particular class of vehicles, from rear visibility requirements. Sony further stated that limiting the rear blind zone visibility requirements to LTVs ignores the fact that passenger cars account for 26 percent of backover deaths and 54 percent of backover injuries, and that

[56] Australian Design Rule 14/02 Rear Vision Mirrors; 2006.

these percentages will likely increase given the relative decline of LTV sales across the market. Delphi and Magna stated their belief that the backover problem is widespread enough that improved rear visibility requirements should not be limited to any particular class of vehicles. Similarly, Ackton suggested that rear visibility countermeasures should not be limited to a certain vehicle class and also raised the issue that trailers could be equipped with sensor-based object detection systems.

In contrast to this broad approach, some automakers commented in favor of limiting any rear visibility improvement to just a portion of the fleet, such as LTVs, saying that, in terms of fatalities, they are statistically overrepresented in backover crashes. Nissan and GM both recommended that a maximum blind zone area approach be used to determine whether a particular model of vehicle warrants improved rear visibility, and recommended against the application of any new requirements by vehicle type. Mercedes suggested that if the agency believes that improved rear visibility should be required for the portion of the vehicle fleet that is statistically overrepresented in backover crashes (*i.e.,* LTVs), then NHTSA should apply the requirements to only those types of vehicles. Honda also commented that rear visibility performance requirements should be instituted for only those vehicles with the highest rates of backover incidents, although it also suggested that NHTSA should actively monitor the data for all vehicle types so that it can consider broader application of the requirements based on the safety need.

Lastly, some vehicle manufacturers generally supported alternative methods for preventing backovers. One manufacturer, Nissan, requested that the agency conduct more research before proposing to require any additional performance requirements for rear visibility. The AAM limited its support to the requirement for ECE R46-compliant convex side mirrors, instead of more advanced countermeasures. Mercedes echoed this approach, but allowed that if more advanced countermeasures were seen as essential, they be limited to LTVs, and not applied to passenger cars. The application of improved rear visibility requirements to LTVs only was also supported by Honda. GM was the lone manufacturer that recommended that NHTSA limit the requirement for improved rear visibility to vehicles with large blind zones only. We have addressed comments relating to those alternative proposals in the sections below.

While NHTSA agrees that requiring enhanced rear visibility for all light vehicles would be the most comprehensive approach to mitigate backover crashes, it would also entail the highest costs of any possible proposal. Commenters also suggested that NHTSA's projected costs were too high and that costs would likely decline once systems such as these were put into wider production. In response to these comments, NHTSA has more fully analyzed the costs and benefits of the proposal in the preliminary regulatory impact analysis (PRIA), which is presented in tandem with this document.

As described in Section II.B, NHTSA has tentatively decided to require improved rear visibility for all vehicles with a GVWR of 10,000 pounds or less. Having taken into account the intent of Congress in passing the K.T. Safety Act, the smaller, yet still-significant number of fatalities involving passenger cars, and the fact that the injury rate for all classes of vehicles is approximately proportional to their representation in the fleet, we do not at this time believe it is in the best interest of safety or otherwise appropriate or permissible under the K.T. Safety Act to exclude passenger cars from rigorous rear visibility performance requirements. Passenger cars account for slightly more than half of the injuries from backover incidents.

The rationale for proposing to require all light vehicles to have improved rear visibility is twofold. First, NHTSA, and Congress, are extremely concerned about the incidence of children being backed over by light vehicles. This is a phenomenon that is not limited to any particular vehicle type, and while the ANPRM did discuss blind zone area measurement, no driver of any type of vehicle could see the entire area behind the vehicle in which a pedestrian, especially a young child, might be located without the aid of an effective rear visibility countermeasure. Therefore, the obvious and most complete solution is to require an enhancement that enables drivers of all light vehicles to see children and other obstacles directly behind a vehicle.

Second, and as noted by some commenters, applying improved rear visibility requirements to just a portion of the fleet would cause an awkward safety disparity between vehicles equipped with a countermeasure, and those without. As NHTSA has noted in the ANPRM and this notice, driver education about and acceptance of rear visibility countermeasures is crucial in realizing their effectiveness. To require visibility improvements in only some vehicles may send a mixed message to drivers that would not achieve the intent of the law.

B. Limitation of Countermeasure Application to Certain Vehicle Types

A second concept explored in the ANPRM was the idea of limiting the requirement for improved rear visibility to certain vehicle types. The idea of having different rear visibility requirements for certain vehicle types was explicitly contemplated by Congress and articulated in the text of the K.T. Safety Act, which stated that "The Secretary may prescribe different requirements for different types of motor vehicles to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons." Furthermore, we believe that in particular, vehicles like multipurpose passenger vehicles and pickup trucks were contemplated by Congress as potentially warranting more of an improvement in rear visibility than do passenger cars. In noting the need for rear visibility performance requirements, the legislative history stated that, "As larger vehicles, including SUVs, pickup trucks, and minivans, have become more popular, more drivers are confronted with larger blind spots." [57]

In the ANPRM, NHTSA considered whether it would be appropriate to take this idea further and limit the requirements for improved rear visibility to the vehicles known as "LTVs," which include multipurpose passenger vehicles, trucks, and minivans with a GVWR of 10,000 pounds or less. The agency reasoned that if a strong relationship between vehicle class and backover incidents existed, a targeted requirement for advanced rear visibility countermeasures could achieve a large percentage of the overall benefits of the technology at a fraction of the overall cost to the industry. Therefore, the agency conducted a statistical analysis and requested comment on the option.

The agency's analysis revealed that while LTVs were statistically overrepresented in backover-related fatalities, they were not significantly overrepresented in backover-related injuries or in backover crashes

[57] S. Rep. 110–275, S. Rep. No. 275, 110TH Cong., 2nd Sess. 2008.

generally. Table 7 below lays out a summary of the results.[58]

TABLE 7—BACKOVER CRASH FATALITIES AND INJURIES AND PERCENT OF FLEET BY VEHICLE TYPE

Vehicle type (GVWR of 10,000 lb or less)	Percent of fleet	Percent of injuries	Percent of fatalities
Passenger Car	58	54	26
Multipurpose Passenger Vehicle	16	20	30
Truck	17	18	31
Van (including minivans)	8	6	13

As shown by Table 7, LTVs represent a disproportionate share of the overall backover-related fatalities, being involved in almost twice as many fatalities as their portion of the fleet. Conversely, passenger cars are represented in only one half as many fatalities as their fleet percentage would indicate. We note that this discrepancy is spread relatively evenly across multipurpose passenger vehicles, trucks, and vans.

However, unlike fatalities, the relationship between backover crashes generally and vehicle type for injuries is proportional to a vehicle type's proportion of the fleet. The data show that passenger cars are just as likely to be involved in a backover incident as are other types of vehicles. The substantially similar numbers of total backovers (including injuries and fatalities) between vehicle types cast doubt on whether it would be in the best interest of safety to limit rear visibility improvement to just LTVs even if it were permissible to do so.

As indicated in the comment summary section above, commenters were split on the idea of imposing countermeasure requirements by vehicle class. Vehicle manufacturers in favor of a requirement that would affect only LTVs included Honda and Mercedes, while Nissan was against such a proposal. Mercedes suggested that if the agency believes that advanced countermeasures are required for the portion of the vehicle fleet that is statistically overrepresented in backover crashed (*i.e.,* LTVs), then NHTSA should require those countermeasures only for those types of vehicles. Nissan stated that it supported using a blind zone threshold, rather than vehicle class, to determine which vehicles require improved rear visibility. Honda also commented that rear visibility performance requirements should be instituted for only those vehicles with the highest rates of backover incidents, although it also suggested that NHTSA should actively monitor the data for all vehicle types so that it can consider broader application of the requirements based on the safety need. Consumers Union made statements that they did not support improving rear visibility for only a portion of the light vehicle fleet, but they did not provide any data or rationale to support the statements.

GM commented that the data provided in the ANPRM indicate that LTVs have a larger blind zone than most passenger cars, and that it can be extrapolated that the increased rate of LTVs in backing crashes could be the result of larger blind zones. Based on this idea, GM stated that this suggests the focus of the rulemaking should be on vehicle blind zone, not vehicle class. However, while NHTSA had considered this correlation, as described above, the agency has found that the relationship between rear visibility and backover crashes appears to involve too many factors to permit isolation of only the impact of rear visibility. This preliminary information suggests that the statistical overrepresentation of LTVs in backover crash incidence is not solely an effect of a vehicle's rear visibility characteristics.

Blue Bird submitted a comment requesting that smaller buses not be subject to any new rear visibility requirements. As it noted, the language of the K.T. Safety Act would include small buses as part of the class of vehicles potentially affected by the regulation. However, Blue Bird offered several reasons why it believes that it would be a better policy decision to exclude buses from the rear visibility requirement. First, it pointed to the fatality and injury data presented in NHTSA's ANPRM, which indicated that buses, which were included in the "Other Light Vehicle" category, were involved in no fatalities and few injuries. Second, Blue Bird stated that many small buses (including small school buses), are not equipped with navigation or multifunction screens. The commenter added that the increased costs could deter some school districts from purchasing new school buses, which could lead to safety disbenefits. Third, Blue Bird noted that most drivers of buses must have commercial driver's licenses, and many are subject to far more training than drivers of passenger vehicles.

We note that another commenter, Rosco, stated conversely that small buses should be subject to improved rear visibility requirements. It argued that small buses, frequently used for special needs children, are frequently used in situations around children. Rosco stated that because these vehicles have limited rearward visibility, they should be equipped with rearview video systems. However, Rosco also notes that operational guidelines (buses, in particular school buses, are driven by professional drivers) advise against traveling in reverse in normal operations. Furthermore, the statistics indicate that despite their proximity to children, the guidelines are effective, as our data indicates relatively few backover incidents involving school buses.

We received no comments regarding LSVs.

While sensitive to the issues cited by Blue Bird regarding school buses, we are proposing that school buses and low-speed vehicles also be included. We believe that it is apparent from the legislative history that Congress intended for this statute to address the problem of backover crashes involving all vehicles with a GVWR of 10,000 pounds or less. Therefore, we are proposing to include all passenger vehicles among the vehicles subject to the enhanced rear visibility requirements without exception.

C. Using Blind Zone Area as a Basis for Countermeasure Requirement

One option presented in the ANPRM was to limit the requirement for improved rear visibility using a vehicle's blind zone area (the area

[58] This table is presented in more detail in section III of the PRIA.

behind a vehicle that cannot be seen directly through the vehicle's rear windows) threshold. This option was based on the preliminary indication that certain vehicles with larger rear blind zones may be more prone to backover incidents.

In their comments, some vehicle manufacturers commented in favor of using a rear blind zone area threshold to determine which vehicles would need improved rear visibility. GM recommended that a maximum blind zone area approach should be used to determine whether a vehicle should be equipped with a countermeasure, and recommended against the application of countermeasures by vehicle type. GM offered a method of measuring a vehicle's viewable area indirectly and noted an associated threshold value of 100–125 square feet measured using a 32-inch target plane, but stated that either the direct or indirect field of view methodology could be used to determine a threshold. While GM commented extensively on how its indirect field of view measurement method correlated with and had some advantages over NHTSA's direct visibility method, it did not provide any additional information to aid in correlating measured direct rear visibility with backover incidents.

AAM, on the other hand, offered a suggestion relating to calculating minimum required field of view using a pedestrian speed of 6 kph (3.7 mph), vehicle speed of 6 kph or less, and estimated driver perception and response time 2.5 seconds. However, no data were provided by the AAM to support the specific values offered.

Nissan also supported a maximum blind zone area approach to identifying which vehicles most warranted improved rear visibility. However, it did not provide any data or specific recommended value and associated justification for its use as a blind zone area threshold.

Consumers Union recommended that a threshold be established based on NHTSA's Monte Carlo analysis in which all areas with risk of 0.1 or higher are required to be visible. However, no justification was provided for choosing 0.1 as a risk threshold as opposed to some other value.

While several commenters stated that they supported use of a blind zone area threshold approach to determine which vehicles should have a countermeasure, those comments did not provide any data in addition to what NHTSA presented that might support such a proposal.

As described in the ANPRM, to determine a suitable blind zone area threshold value at which vehicles with larger blind zones would be required to have a improved rear visibility, NHTSA plotted the average ratios of backing crashes to non-backing crashes and backover crashes to non-backing crashes versus the direct-view rear blind zone areas for 28 vehicles, as shown in Figure 1. These 28 vehicles were selected because they were the ones for which NHTSA had measured direct rear visibility and for which sufficient state crash data were available.

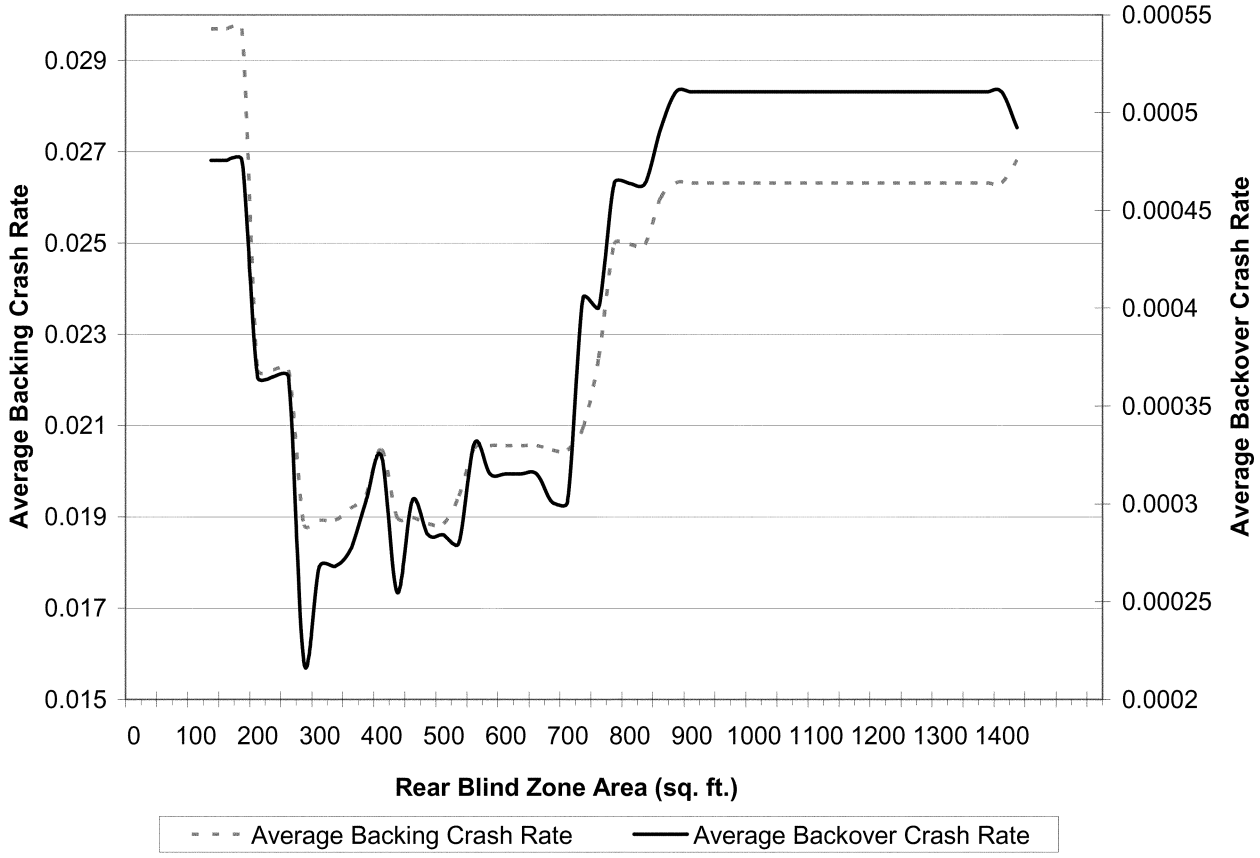

Figure 1. Backing and Backover Crash Rates as a Function of Vehicle Rear Blind Zone Area

Upon further examination, NHTSA has determined that using rear blind zone area to develop a threshold is not feasible at this time. We believe that the 28 vehicles we used to develop Figure 1 do not depict an obvious cutoff point where the risk of a backing crash dramatically increased with increasing blind zone area and that some vehicles with small blind zone areas (*e.g.,* less than 300 square feet) have fairly high backing and backover crash rates. Also, while we found that direct rear blind zone area measured in a 50-foot square centered behind the vehicle was correlated with *backing* crashes to a mildly statistically significant degree, the relationship between size of the rear blind zone area directly behind vehicles and backover crash risk, was not correlated to a statistically significant degree.[59] [60] 60 Finally, during our SCI review, we determined that a majority of the victims in backover crashes were directly behind the vehicle and within a range of 20 feet from the rear bumper, an area that is not visible to the driver in many vehicles of all types.[61] Therefore, any requirement for a maximum rear blind zone area that permitted the area within 20-foot aft of the rear bumper to not be visible to the driver would fail to address a large portion of backover crashes.

D. Use of Convex Driver's-Side Mirrors

Several commenters recommended that NHTSA make modifications to the existing mirror requirements of FMVSS No. 111 in order to realize the goal of the K.T. Safety Act. Among other requirements, FMVSS No. 111 currently requires a flat mirror on the driver's side, and permits, although does not require, a convex mirror on the passenger side (nearly all vehicles are equipped with such a mirror, however). NHTSA notes that FMVSS No. 111 does allow exterior rearview mirrors which incorporate an outer curved portion, as long as the required flat portion is also present. In the ANPRM, NHTSA did not consider modification of the existing side mirror provisions of FMVSS No. 111 since we believed it to be an ancillary issue with regard to the rear visibility activity currently being pursued.

In their comments on the ANPRM, the AAM, along with several vehicle manufacturers, recommended that NHTSA adopt European (ECE R46) mirror specifications to require non-planar side mirrors on both the driver and passenger sides of light vehicles. They stated that this would enable drivers to detect a majority of pedestrians involved in reported backover incidents, as most victims do not begin directly behind the vehicle, but rather enter the area directly behind the vehicle from one side or the other. Specifically, the AAM stated that its analysis of the agency's SCI cases indicated this expanded field of view (from non-planar mirrors) would cover approximately 80 percent of the cases investigated for which the pre-crash movement of the pedestrian was recorded. Furthermore, the commenters stated that the increased field of view of convex driver's-side mirrors would give drivers a greater window of time in which they could see an incurring pedestrian in the side mirror. The AAM stated that using the ECE specification would result in an increase in the lateral angular field of view up to 286 percent in expanded field of view over that required by FMVSS No. 111 for vehicles meeting passenger car requirements. In addition, the AAM cited findings from a study which concluded that non-planar mirrors can increase angular viewing coverage by over 300 percent when compared to flat mirrors and that spherical and aspheric mirrors with spherical portions can provide a substantial reduction in glare for drivers under normal conditions and improvements in lane change situations.

GM said it agrees with the AAM that 80 percent of the SCI cases are incursions from the side and could be addressed by modifying existing mirror requirements to the side and rear of the vehicle, and agreed with AAM on adopting ECE R46 requirements.

Mercedes said it supports the AAM's recommendation to adopt ECE R46 requirements for convex exterior mirrors, which it said would substantially expand the required field of view for all light vehicles and thereby improve the ability of drivers to detect pedestrians and pedal cyclists moving into the rearward pathway of the vehicle.

Conversely, Advocates for Highway and Auto Safety stated that simple changes in the current requirements for side and interior rearview mirrors will not fully address the problem of blind zones, enable drivers to see the entire area immediately behind the vehicle, or comply with the statutory mandate to "expand the required field of view * * *"

After careful consideration of the comments received, NHTSA believes that modifications to the side mirror requirements in FMVSS No. 111 are best handled in a separate rulemaking. We have come to this conclusion for two reasons. First, given that only marginal gains could be made in field of view to the sides of the vehicle, we do not believe that those gains would result in a reduction of backovers. NHTSA's rear visibility measurements show that rearview mirrors in current vehicles typically show a much wider area that exceeds the minimum requirements set forth in FMVSS No. 111, as illustrated in Figure 2 below. As a result, a fairly wide field of view provided by side rearview mirrors has already been present in the backover incidents that have occurred to date. At the extreme lateral distances from the vehicle, in the area in which an ECE-compliant convex mirror would display but a standard side-view mirror would not, pedestrians are sufficiently far from a vehicle that a driver (if the driver was using the mirror) would likely not perceive a risk that the individual would intersect the vehicle's path as the vehicle moved rearward.

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[59] The correlation between direct rear blind zone area and backing crashes was correlated to a statistically significant degree. However, this correlation was not sufficiently strong to use as a basis for determining a specific threshold.

[60] Partyka, S., Direct-View Rear Visibility and Backing Risk for Light Passenger Vehicles (2008).

[61] See analysis of SCI data, section V.B.i.

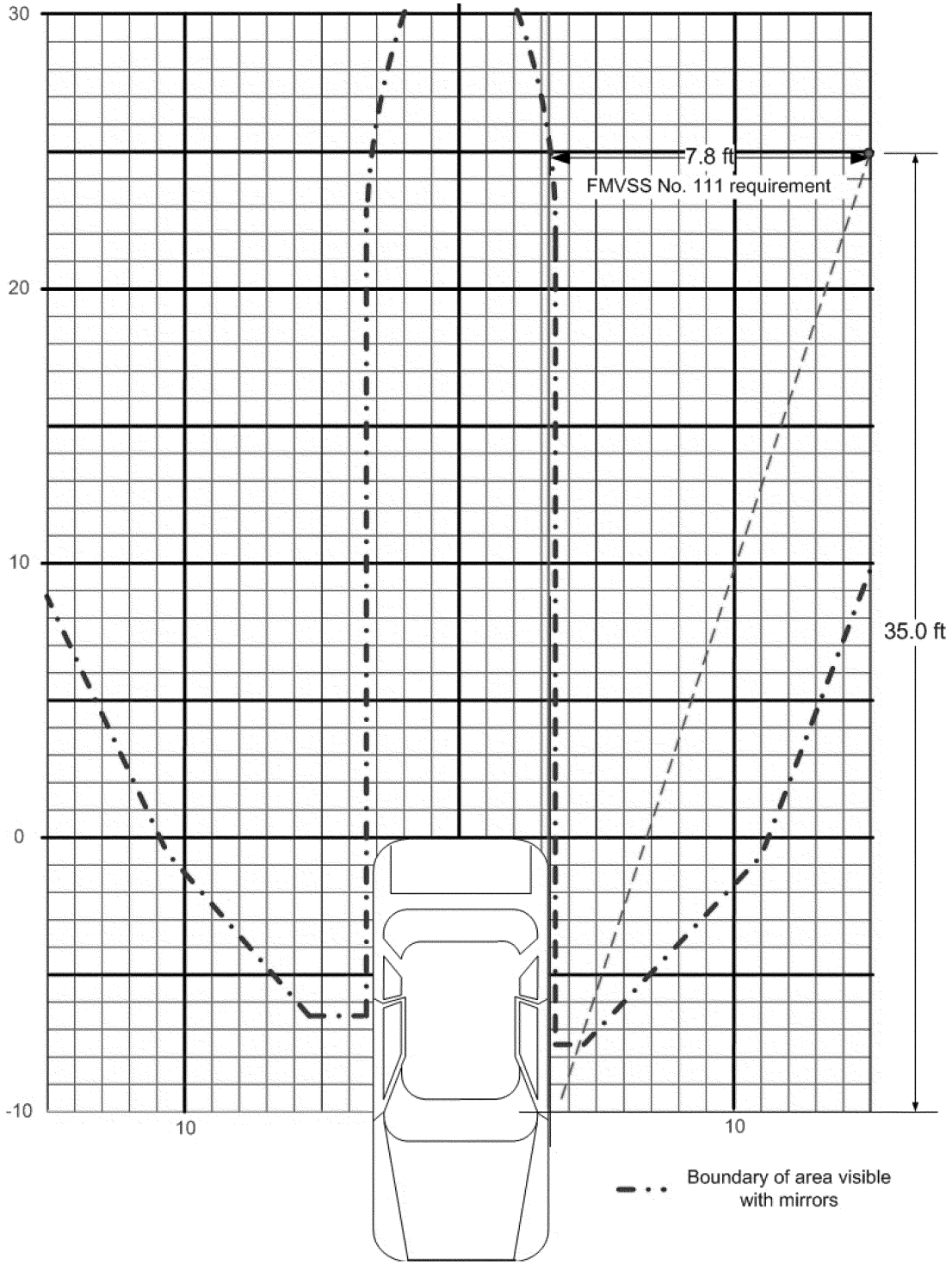

Figure 2. Comparison of FMVSS No. 111 Driver-Side Mirror Coverage Requirements versus Approximate Typical Mirror Coverage for Current Vehicles for 28-inch Tall Object

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Second, ECE R46 compliant mirrors would not provide a field of view that includes what the agency has determined, through Monte Carlo simulation, to be the highest risk areas for backover crashes, which are the areas directly behind the vehicle. Any areas of crash risk for a pedestrian behind the vehicle that would fall within the field of view of a convex side mirror are already well within the field of view of an existing FMVSS No. 111-compliant side mirror. Thus, we anticipate that little or no net

improvement in backover rates would occur if there were a switch to ECE R46-compliant mirrors.

Notwithstanding these observations, NHTSA plans to reexamine the side mirror requirements in FMVSS No. 111 in upcoming rulemaking actions. The suggestions of AAM and other commenters that these mirrors may provide safety benefits such as glare reduction and lane-change assistance will be considered in the context of those actions.

E. Advanced Systems and Combination Sensor/Rearview Video Systems

NHTSA's analyses are based on currently available technology. However, it is known that additional technologies are under development, but the quality of their performance is not known at this time. Two additional sensor technologies are being developed by manufacturers that could be used to improve a vehicle's rear visibility: an infrared-based object detection and video-based real-time image processing for object detection. Infrared-based systems operate by sensing the infrared radiation emitted by objects located in their detection range and can produce non-photographic images that portray the shapes and locations of objects detected. Rear object detection via video camera uses real-time image processing capability to identify obstacles behind the vehicle and then alert the driver of their presence. While these technology applications may eventually prove viable, because of their early stages of development, it is not possible at this time to assess their ability to effectively expand the visible area behind a vehicle.

NHTSA is currently engaged in cooperative research with the Virginia Tech Transportation Institute and GM on Advanced Collision Avoidance Technology relating to backing incidents. The research is focused on assessing the ability of more advanced technologies to reduce the occurrence of backing crashes, and refining a tool to assess the potential safety benefit of technologies, such as an advanced object detection system with integrated automatic braking capability. The completion of NHTSA's advanced technology research effort is not expected until calendar year 2011.

Commenters including Continental, Magna, and Takata indicated that they are either developing or anticipate development of advanced systems with pedestrian detection capability in the future. Nissan indicated that they are studying some potential future applications which could limit backing speed, apply automatic braking, or provide the driver with a haptic (*i.e.,* tactile, *e.g.,* vibration) response [62] to indicate the presence of a rear obstacle. While future advanced safety systems may be developed to reduce backover crashes, no systems are currently ready for market. Therefore, the proposed improved rear visibility requirements specified in this notice, while not precluding use of promising advanced technology, cannot be based on the possible benefits that may be attainable with such future systems.

F. Rear Field of View

In the ANPRM, NHTSA invited comment on what area behind the vehicle would need to be made visible to the driver in order to best improve safety. A wide area of up to 50 feet wide by 50 feet long was suggested as a possible coverage area option. NHTSA inquired about the feasibility of coverage such a large area and sought comments on which areas behind the vehicle may be most critical for backover mitigation.

Multiple commenters discussed the average area that any countermeasure would be expected to "see" and, in particular, noted the number of SCI cases in which the victim entered the vehicle's path from the side of the vehicle. Sony and Kids and Cars both stated that consideration should be given to areas to the sides of the vehicle, with Kids and Cars stating that all of the areas not visible directly or through side mirrors should be taken into consideration. Sony stated that limiting the rear test area to the area within the edges of the vehicle would fail to account for obstacles that move into the rear blind zone from outside of the immediate rear of the vehicle. Sony suggested that the test area should account for, at a minimum, vehicle backing speed, driver reaction time, and the speed of potential obstacles. Advocates for Highway and Auto Safety indicated that they believe that if the area immediately behind a motor vehicle is visible to a driver, substantial safety benefits will result for pedestrians, especially very young children.

Many commenters expressed a desire to minimize or eliminate any "gap" between the area that is required to be visible and the rear bumper. However, the rationale for allowing a gap seemed based to the difficulty of rear visibility systems might have in detecting areas directly behind the bumper. Kids and Cars suggested that the area of required coverage should begin at the rear bumper because when children approach a vehicle from the side, they frequently intersect the path of the vehicle close to the bumper. Advocates for Highway and Auto Safety stated that the countermeasure needs to provide the driver with a field of view that eliminates the entire blind zone immediately behind the rear of the vehicle, suggesting that no gap should be allowed. Consumers Union also stated that they believe no gap should exist in the test zone. Nissan stated that as long as the target area size is realistic, it would be appropriate to define the limits of the test zone such that it begins immediately behind the rear bumper. Rosco stated that coverage should begin at a vertical plane tangent to the rearmost surface of the rear bumper. Sony indicated that NHTSA need not and should not permit any significant gap behind a vehicle before the visibility zone begins.

On the other hand, some commenters supported the idea of a gap. The AORC stated that young children should be visible using a rearview video system beginning at a distance of 0.25 meters (0.82 ft) from the rear bumper and extending outward to a minimum distance of 3 meters (9.84 ft). GM stated that, as most of the documented SCI backover cases involved pedestrians entering the vehicle's path from the sides of the vehicle, a gap in the area immediately aft of the rear bumper would not be unreasonable. Honda also supported a small gap of 0.3 meters (1 foot), noting that if no gap were permitted, video cameras might be placed in locations that could be subject to damage in low-speed collisions, thereby increasing the cost of ownership.

In regard to the size of the visible area behind a vehicle may be needed to adequately mitigate backover crashes, Advocates for Highway and Auto safety stated that "there is no reason why a rearview video system could not provide an optimal coverage area that is unlimited when the vehicle is on a flat surface or extends at least 20 feet behind the vehicle." Multiple commenters noted that rear-mounted convex mirrors could not be modified to attain such a range as was indicated in the ANPRM. NHTSA's test results for rear-mounted convex look-down and cross-view mirrors agree with this comment. Manufacturers' descriptions of current sensor-based systems included in their comments also did not indicate that sensors could meet this range requirement. While no comments were received regarding the ability of rearview video systems to cover this

[62] Providing a driver with a haptic response means providing tactile feedback such as by causing the steering wheel to vibrate.

range, NHTSA's testing has shown that while the systems may display such a range, image quality decreases as areas further out from the vehicle are displayed.

In response to the ANPRM description of NHTSA's Monte Carlo analysis of backover risk as a function of pedestrian initial location, GM commented that NHTSA's analysis did not factor in the probability that a pedestrian would have actually been located at any specific point on the test grid. While NHTSA agrees with GM's comment, we note that the only available data for use in asserting such a probability of pedestrian location would be SCI case data, which is not nationally representative.

As will be explained later in this document, based on the above comments and some new analysis, NHTSA has determined that a coverage area of 20 feet in length and 10 feet in width (5 feet to either side of the vehicles centerline) is the most feasible and effective range for mitigating backover crashes.

G. Rear Visibility System Characteristics

In the ANPRM, NHTSA noted several possible system characteristics that may be important to require in order to ensure that the maximum possible effectiveness of a rear visibility system may be achieved. Our general approach in establishing performance requirements was to identify key areas that we believe are pertinent to overall system effectiveness. In the absence of existing consensus industry standards, we reviewed existing systems and made determinations regarding performance areas to specify. These areas include visual display characteristics and aspects of rearview image presentation. The following paragraphs summarize comments relating to system characteristics and describe NHTSA's analysis regarding those possible specifications.

i. Rearview Image Response Time

Image response time is the time delay between the moment the vehicle is put into reverse gear, and the moment which an image to the rear of the vehicle is displayed by a rear visibility system. The importance of response time to safety is illustrated by a comment from Ms. Susan Auriemma, in which she describes having to wait several seconds for the image to appear and notes that drivers may proceed to back without waiting for the image to appear. NHTSA agrees with her concern that if the display takes too long to appear, drivers may be likely to begin a backing maneuver before the image behind the vehicle is displayed, rendering the system less effective. In the ANPRM, we suggested a maximum value of 1.25 seconds for the maximum allowable time for a rearview video image to be displayed to the driver, or image response time.

Commenters generally concurred with NHTSA's concerns regarding image response time; however, manufacturers identified several technical issues which merit consideration. While GM and Gentex agreed that rearview video systems are able to display an image within 1.25 seconds, they noted that based on the complexity of the system and the need for tolerances, systems can typically take longer to produce images in some situations due in part to electronic image quality control checks that are a precursor to the full display of an image. Therefore, NHTA's suggested maximum value of 1.25 seconds could unnecessarily restrict the operation of some systems and in theory impact the electronic quality control approach of manufacturers. GM and Gentex noted that a maximum image response time value of 2.0 seconds would allow for timely activation of the system based on a reverse signal and provide a reasonable tolerance for system variation while ensuring the availability of an image at the beginning of backing maneuvers. Specifically, Gentex stated "In total, a typical application requires a nominal 1.20 seconds to display a rearview video image. With tolerance, as much as 2.00 seconds may be required—not including the time between the gear change * * *" Gentex went on to recommend that a maximum image response time of 3.0 seconds allows the rearview video system enough time to ensure the driver is presented with a quality video image. However, no data justifying the need for the additional 1 second was provided by Gentex. While NHTSA understands that allowing time for system checks may result in a higher quality image, we also believe that providing an image soon after the vehicle is shifted into reverse may substantially increase the likelihood that a driver could detect a rear obstacle, if present.

AAM recommended that maximum image response time be specified with reference to the time "when the vehicle driveline is engaged in reverse". NHTSA agrees that the point in time in which the vehicle's transmission is engaged in reverse gear is the most logical point in time from which to orient the image response time criterion.

Also in regard to image response time, NHTSA acknowledges that liquid crystal displays require some warm-up time before an image can be displayed clearly. In-dash LCD displays that are used for multiple functions are typically already active before the driver shifts into reverse gear and therefore are already warm and able to display a rearview video image immediately upon shifting into reverse. However, in-mirror LCD displays remain off until reverse gear is selected and, therefore, require some warm-up time before a clear rearview video image can be displayed. Therefore, some requirement for additional image response time is inherent in the use of in-mirror LCD displays, but is avoided with in-dash displays. Conversely, given that the buildup of heat can also be an issue with in-mirror LCD displays due to the limited area within the mirror in which heat may dissipate, providing power to these displays at all times as a means of avoiding longer image response times is not feasible. Therefore, providing some allowance of time for an in-mirror LCD display to warm-up may be reasonable.

Somewhat related to system the issue of system response time was a comment from the Advocates for Highway and Auto Safety that suggested vehicles be equipped with an interlock feature that prohibits it from being able to move in reverse, even after the transmission has been placed in reverse gear, until a short period after the countermeasure system becomes fully operational. This sort of measure would ensure that drivers had all available information about the presence of any rear obstacles at the moment that backing began. While this idea appears to have merit, NHTSA is concerned that drivers that are parking or hitching a trailer may be annoyed by such a feature. NHTSA seeks comment on whether this feature might be acceptable to consumers and whether any substantial advantage of this feature over the use of a maximum response time specification exists. Based on the comments, the agency will consider whether to include this feature in the final rule.

ii. Rearview Image Linger Time

Image linger time is another issue that was raised in the ANPRM. Linger time refers to the period in which a rearview image continues to be displayed after the vehicle's transmission has been shifted out of reverse gear. As noted by some commenters, a period of linger time may be desirable for situations where frequent transitions from reverse to forward gear are needed to adjust a vehicle's position (*e.g.,* parallel parking and hitching). In the ANPRM, NHTSA indicated that a minimum of 4 seconds but not more than 8 seconds of linger time may be appropriate after the vehicle is shifted from the reverse

position. NHTSA is concerned that excessive linger time may provide a source of distraction to the driver by a video image that is displayed longer than is needed. Consumers Union concurred with NHTSA's recommendation of 4–8 seconds for linger time. Nissan stated that its systems currently exhibit a linger time of approximately 200 milliseconds and that it does not see value in allowing a longer linger time. GM recommended a maximum linger time of 10 seconds or, as an alternative, a speed-based limit in which the rearview video display would turn off when the vehicle reaches a speed of 5 mph (8 kph). GM noted that a time-based linger time would be less costly to implement than a speed-based linger time would. Based on their observations of drivers making parking maneuvers, the AAM also recommended a maximum linger time of 10 seconds, but specified an alternative speed-based value of 20 kph (12.4 mph).

Because an excessive image linger time could result in adverse safety consequences associated with potential driver distraction when the vehicle is moving forward, NHTSA believes that linger time should be limited. On the other hand, NHTSA agrees with commenters who noted that allowing a reasonable linger time would provide a benefit to drivers who are parallel parking or hitching a trailer. Therefore, we believe there is a need to specify a maximum, but not a minimum, image linger time value for presentation of a rearview image.

iii. Rear Visibility System Visual Display Brightness

In the ANPRM, NHTSA suggested that it is appropriate to adopt a minimum visual display luminance to ensure that a rearview image is displayed with sufficient brightness to be adequately visible in varying conditions, such as bright sunlight or low levels of ambient light. Adequately visible, in this case, would mean that a driver can discern the presence of obstacles in the rearview video image. We note that in the SCI sample, 95 percent of backovers took place in daylight hours. Therefore a rearview image should be bright enough to be visible in daylight conditions. Commenters noted that a minimum of 500 cd/m^2 is appropriate based upon research performed by vehicle manufacturers and that internal specifications routinely require a luminance of at least this value. During the agency's review of existing rearview video systems, we found the display brightness of the existing systems to be adequate such that visual information was discernible under varying ambient conditions, such as background light level. While we do not currently have reason to believe that vehicle manufacturers are installing rearview video systems with displays having brightness values less than 500 cd/m^2, we believe it is necessary to propose an appropriate minimum brightness so that drivers can see the image under varying ambient lighting conditions.

iv. Rear Visibility System Malfunction Indicator

In the ANPRM, NHTSA indicated our belief that no malfunction indicator would be necessary for a system that presents a visual image of the area behind the vehicle since the absence of an image would clearly indicate a malfunction condition. Multiple commenters agreed with NHTSA's suggestion that such a malfunction indicator is not necessary for a system presenting a rearview image. We agree with these comments.

H. Rear Visibility System Compliance Test

A majority of comments regarding a rear visibility system compliance test related to ambient lighting conditions during test and the specific test object used. Comments regarding these issues and NHTSA's analysis of them follow.

i. Compliance Test Ambient Light Level

Given that ambient lighting conditions can affect how well a driver is able to see an in-vehicle visual display, the ANPRM solicited input regarding what ambient lighting conditions may be most appropriate for rear visibility system compliance testing. GM recommended that testing be conducted in 3 lux conditions, or the level provided in dark ambient conditions with the reverse lights operating. Sony suggested that the external ambient light level for testing should be 5 lux with reverse gear and lamps engaged. The AORC stated that tests should be conducted in a "min/max illumination condition which best simulates daytime conditions since the field data indicates this is the accident condition present and will allow the best value solution to be used." Given that 55 of the 58 SCI backover cases occurred in daylight conditions, NHTSA tends to concur with the AORC's comment on this matter. We believe that for the purpose of preventing backover crashes a worst case, "nighttime" ambient lighting condition for system compliance testing may be an unnecessarily challenging requirement.

ii. Compliance Test Object

NHTSA received many comments regarding specifications for a compliance test object. Certain features of the test object, most significantly the height, could have substantial ramifications on the burdens of compliance. Similarly, the shape and material composition of the test object would have had significant ramifications for manufacturers using sensors as a means of compliance. However, given that NHTSA is proposing a performance requirement that would most likely be met through the use of rearview video systems, the specific characteristics of the test object may not have as great of an impact on countermeasure performance (with the possible exception of the height and width of the test object). Nonetheless, we have summarized and addressed the comments on this subject below.

The ANPRM indicated NHTSA's belief, based on real world data, that the test object should simulate the physical characteristics of a toddler. Specifically in the ANPRM and again in this document, we have stated that 26 percent of victims in passenger vehicle backover crashes are 1 year old or younger. To date, NHTSA has generally used the average height of a 12-month-old child to represent a "1-year-old child" size to evaluate technologies that could be used to mitigate backover crashes. However, looking at the first 58 SCI cases shows that the average age of the 21 victims aged 1 year or younger was 15 months.[63] In their comments in response to the ANPRM, the AAM and GM recommended that the target dimensions be based on an 18-month-old child to best represent the victims involved in the first 56 documented SCI backover crash cases. Anthropometric data published by the CDC shows that the height difference between an average 15-month-old child and an average 18-month-old child is approximately 1 inch.[64] The difference in shoulder breadth for these two ages is approximately 0.2 inches. Upon further consideration of the SCI data regarding the age of victims, the fact that the small difference in size between a 15-month-old and 18-month-old child,

[63] This apparent disparity is explained by the fact that the category "1-year-old child" encompassed all children under age 2. Therefore, the average age of those children, some of whom were almost 2, and some younger than 12 months comes out to 15 months.

[64] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001).

and the rationale provided by commenters, NHTSA agrees with the idea of basing the test object dimensions representing an average 12- to 23-month-old child using a midpoint age value of 18 months.

In the ANPRM, NHTSA suggested specific test object dimensions that correspond to a 12-month-old child. In regard to the height of the test object, NHTSA suggested in the ANPRM some specific test object dimensions that correspond to a 12-month-old child, including a height of 30 inches (0.762 meters). As stated earlier, the average height of a "1-year-old" child was used in NHTSA testing since SCI data have indicated that 26 percent of victims are 1 year of age or younger. In response to the height value suggested in the ANPRM, the AAM and GM recommended alternative heights. Specifically, GM recommended a test object height of 32 inches (81 cm). The AAM recommended specific test object dimensions of 82 cm (32.28 in) height based on 2000 CDC data for an 18-month-old child.[65] NHTSA believes that the difference between 30, 32, and 32.28 to be minimal for this purpose and in the proposal offers a compromise amongst these values.

In regard to test object width, NHTSA suggested a value of 5 inches to represent the breadth of an average child's head. In response to the suggested value, the AAM recommended an alternative test object width of 15 cm (5.9 in.) based on 2000 CDC data for an 18-month-old child.[66] NHTSA agrees and has reconsidered the size of test object needed to adequately assess system performance.

NHTSA's test data to date demonstrate that, except at the edges of the image and immediately aft of the rear bumper (*i.e.,* within 1 foot), a rearview video system generally displays the entire body of the child when present within the video camera's field of view. Since the entire body of a child standing behind the vehicle is visible with a rearview video system, the agency now believes that the test object's width should represent the width of the child's entire body, rather than just the child's head. While the average shoulder breadth of a standing 18-month-old child with their arms at their sides is approximately 8.5 inches, the absolute, overall width of an 18-month-old child standing with arms relaxed approaches 12 inches. A 12-inch test object width is currently used to represent a small child in the school bus mirror test defined under paragraph S13 of FMVSS No. 111. Furthermore, in order to perform compliance testing in regard to visual display image quality, the test object must be large enough that when displayed at substantial longitudinal range behind the vehicle the object is still large enough to be measured across its smallest dimension with some accuracy and minimal obscuration due to image graininess (for an electronic display).

V. NHTSA Research Subsequent to the ANPRM

As detailed in the ANPRM, NHTSA had conducted research to assess drivers' ability to avoid backing crashes in a controlled test involving presentation of an unexpected obstacle behind the vehicle while the driver backed out of a garage. Possible countermeasure technologies assessed in this research included a rearview video system with a 7.8-inch (measured diagonally) visual display in the center console, rearview video with a 7.8-inch in-dash visual display augmented by a separate rear parking system, and a baseline (or control group) condition in which no system was present.

The results of this research, which were presented in detail in the ANPRM, showed that drivers avoided 42 percent of crashes when a rearview video system was present and only 15 percent of crashes when both rearview video and rear object detection sensors were present on the vehicle. Without a system, all participants crashed.

While the results provided useful information regarding the potential of available technologies to aid drivers in avoiding backing crashes with unexpected obstacles, the study did not address the additional technologies being considered as a means of improving rear visibility per the Act. As a result, additional research was undertaken after publication of the ANPRM to assess drivers' ability to use a rear parking sensor system (alone), a rear-mounted convex "look-down" mirror, and rear-mounted cross-view mirrors. In addition, to assess whether display location for a rearview video system may affect drivers' performance in avoiding backing crashes using the system, drivers were also tested using rearview video systems with two sizes of in-mirror visual displays (2.4 inch and 3.5 inch). Finally, research aimed at investigating the effect of test location on results was also completed. All the research results that NHTSA has collected to date are available on the NHTSA Web site and in Docket No. NHTSA–2009–0041. A complete summary of NHTSA's research on rear visibility countermeasure technologies is presented in Section VI.

A. Rearview Video Systems With In-Mirror Visual Displays

Two rearview video system conditions were assessed: one having a 2.4-inch visual display and another with a 3.5-inch visual display. These tests used the same 2007 Honda Odyssey that was used in the previous rearview video system test, and the drivers in the tests were all drivers who personally owned a 2008 Honda Odyssey with a rearview video system with visual display (original equipment, 2.4 inch) integrated in the interior rearview mirror, to make sure that unfamiliarity with such a system was not a factor. The numbers of test participants run were 12 for the 2.4-inch display and 10 for the 3.5-inch display. The test results showed very different results between the two visual display sizes. Thirty-three percent of subjects driving vehicles equipped with a rearview video system with 2.4-inch visual display avoided crashing into the obstacle. However, 70 percent of subjects driving vehicles equipped with a rearview video system with 3.5-inch visual display avoided a crash. However, despite the observed 37 percent more crashes avoided with the larger in-mirror display, the result was not found to be statistically significant due to the relatively small sample size of subjects tested.[67] Across all system conditions tested, the rearview video system with 3.5-inch visual display proved to be the one with which drivers avoided the most crashes.

B. Rear-Mounted Convex Mirrors

A similar test was conducted with rear-mounted convex "look down" mirrors and rear cross-view mirrors. These tests also used the 2007 Honda Odyssey and were conducted using owners of this type of vehicle. Since no vehicle sold in the U.S. is known to offer rear convex look-down mirrors as original equipment, an aftermarket mirror was used. To provide the test participants in this system condition with some experience using the mirror (before they were presented with the

[65] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001).

[66] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001)

[67] In2010, NHTSA intends to conduct additional trials of this experiment to obtain more data in an effort to attain statistical significance.

unexpected obstacle event), the mirrors were installed on their vehicles for 4 weeks prior to the test event.[68] During the test procedure, none of the thirteen participants that participated in the study successfully avoided the unexpected obstacle, giving a driver performance factor of zero.

A similar test was conducted with rear cross-view mirrors. This test condition involved use of a 2003 Toyota 4Runner, which is the only vehicle sold in the U.S. known to offer rear convex cross-view mirrors as original equipment. Test subjects were owners of a 2003–2007 Toyota 4Runner who had owned and driven the vehicle for at least 6 months. During the test procedure, none of the seven participants that participated in the study successfully avoided the unexpected obstacle, giving the rear cross-view mirror system a driver performance factor of zero.

C. Rear Sensor Systems

Using the same unexpected obstacle event scenario, NHTSA tested fourteen drivers of vehicles equipped with a rear parking sensor system. This system involved use of a 2009 Ford Flex with an original equipment rear parking aid system using ultrasonic sensors. As with the testing of the other system types, drivers of the Ford Flex with sensor-based rear parking aid system were persons who owned the vehicle and had driven it as their primary vehicle for at least 6 months, so that they would be familiar with the system. During the test, the parking aid system on this vehicle detected the plastic obstacle and produced an auditory warning in 100 percent of trials. This detection rate was significantly better than the 39 percent detection rate observed in the NHTSA's prior testing that used an identical scenario but a different test vehicle.[69] Despite the consistent rate of object detection demonstrated by the Ford Flex rear parking sensors, only one test subject in this system condition successfully avoided crashing into the obstacle, resulting in only 7 percent of crashes avoided. However, we note that all of the participants braked slightly, and four came to a momentary, complete stop before resuming rearward motion and crashing into the obstacle.

D. Ability of Currently Available Sensor Technology To Detect Small Child Pedestrians

NHTSA's 2009 continuation of research to examine drivers' ability to avoid backing crashes used a 2009 Ford Flex equipped with a rear parking system. As noted in Section C above, this vehicle exhibited a 100-percent detection rate for the plastic obstacle used in the final conflict scenario. Given the improved detection performance seen with this ultrasonic-based sensor system over prior testing results using other ultrasonic systems, NHTSA thought it appropriate to assess this system's ability to detect small children.

Using a protocol developed previously and documented,[70] NHTSA conducted static and dynamic tests using young children and recorded the sensor system's ability to detect the children. Testing was conducted with two 1-year-old children and four children aged approximately 3 years. Tests with 1-year-old children included standing, walking laterally, and riding a wheeled toy that was towed (by test staff) laterally behind the vehicle. Tests with the 3-year-old children included standing, walking laterally, running laterally, and riding a wheeled ride-on toy behind the vehicle.

Testing showed that the 1-year-old children were detected in 100 percent of trials at a range of 1, 2, or 3 feet behind the vehicle when walking or riding on the wheeled toy. At a range of 4 feet, the 1-year-old children were detected in 4 of 6 trials (67 percent) when walking, but were not detecting at 4-foot range when riding the wheeled toy.

The 3-year-old children were found to be detected out to a range of 6 feet. Table 8 below summarizes the results for these tests and shows strong detection performance out to a range of 3 feet, as was seen for the younger children. However, detection performance appears to decline significantly at the 4-foot range.

TABLE 8—2009 FORD FLEX REAR SENSOR SYSTEM DETECTION PERFORMANCE WITH 3-YEAR-OLD CHILDREN

Longitudinal range from rear bumper face	Walking (%)	Running (%)	Ride-on toy (%)
1 ft	100	100	100
2 ft	100	100	100
3 ft	100	67	87
4 ft	40	13	47
5 ft	20	0	0
6 ft	20	0	0

These tests demonstrated improved consistency of detection over results from past NHTSA testing of ultrasonic-based sensor systems. However, the short detection range for young children is insufficient for the purposes of backover mitigation. NHTSA notes, however, that as with research results described in the ANPRM, all systems tested were designed as parking aids and were not intended to be used for the purpose of detecting children.

VI. Countermeasure Effectiveness Estimation Based on NHTSA Research Data

Three conditions must be met for a rear visibility technology to provide a benefit to the driver. First, the crash must be one that is "avoidable" through use of the device; *i.e.,* the pedestrian must be within the target range for the sensor, or the viewable area of the camera or mirror. Second, once the pedestrian is within the system's range, the device must "sense" that fact, *i.e.,* provide the driver with information about the presence and location of the pedestrian. Third, there must be sufficient "driver response," *i.e.,* before impact with the pedestrian, the driver must receive this information and respond appropriately by confirming whether someone is or is not behind the vehicle before proceeding. These factors are denoted as f_A, f_S, and f_{DR}, respectively, in this analysis. Their product is the final system effectiveness.

This three-phase concept is depicted in Figure 3 below for both sensor-based systems and visual systems (*i.e.,* rearview video systems, mirrors).

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[68] In order to conceal the fact that this was an experiment in rear obstacle detection, participants were told that recording devices were installed in the rear mirror.

[69] Mazzae, E.N., Barickman, F.S., Baldwin, G. H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[70] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006, and Vehicle Backover Avoidance Technology Study, Report to Congress, November 2006.

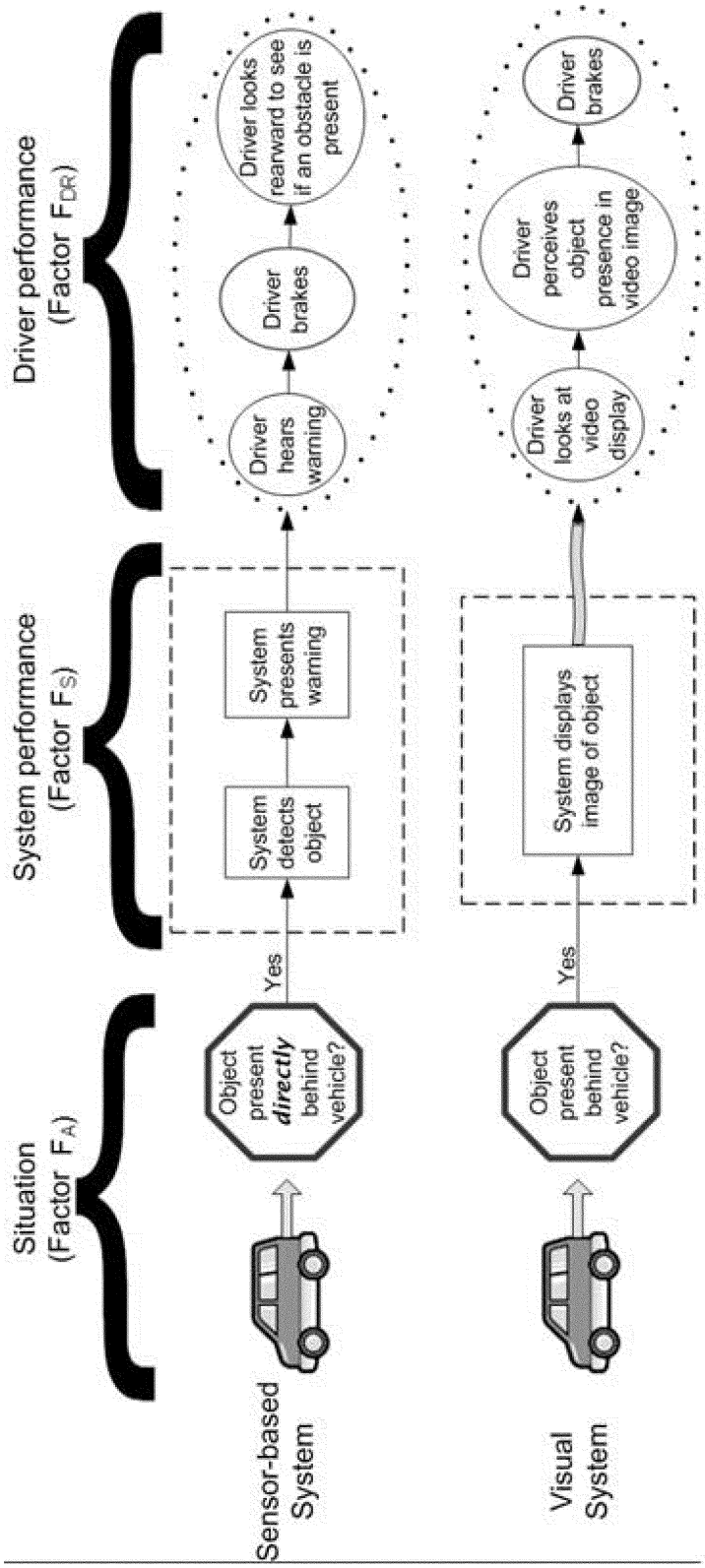

Figure 3. Overall Effectiveness Methodology Illustration

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Based on this general description of the process of avoiding a backing crash, NHTSA has developed overall effectiveness of various backover countermeasure technologies using three individual factors. First, SCI backover incident reports were examined to characterize the geometry of the specific situations in which a backing vehicle struck a pedestrian or cyclist to determine if the backover

crash was conceivably avoidable using a given technology and standard vehicle equipment (*i.e.,* required rearview mirrors). We call this the "avoidability" of the backing conflict situation, or factor "F_A" depicted in the figure above. Second, we estimated the probability that a countermeasure could sense and warn the driver of the rear obstacle, which we call "system performance," or factor "F_S" in the figure above. Finally, we determined the likelihood of a driver responding appropriately to information provided by the system to successfully avoid a backing crash. We call this "driver reaction," depicted above as factor "F_{DR}." If an obstruction in the path of a backing vehicle is avoidable, detectable, and a driver reacts appropriately, a backover crash will be avoided. Therefore, the "overall effectiveness" of the system is calculated by multiplying F_A, F_S, and F_{DR} together. The derivation of these three factors is described below.

A. Situation Avoidability

Factor "F_A" was derived by determining the "avoidability" of a backover crash. In order to better understand how avoidable these situations are, NHTSA closely reviewed the SCI backover case reports. By qualitatively analyzing the case reports, NHTSA assessed a variety of factors concerning the case and how they contributed to "avoidability", including:

- Original and final position of the vehicle.
- Vehicle speed.
- If the victim was conceivably visible through direct vision or indirectly using the vehicle's mirrors given the visual aspects of the environment surrounding the vehicle during the backing maneuver (*i.e.,* was the area clear of visual obstructions?).
- Position of the victim with respect to the vehicle.
- Size, orientation (*i.e.,* standing, sitting), and movement of the victim.
- If the victim was detectable given the detection characteristics of a given technology.
- If the vehicle could have stopped in time given typical system performance for that technology (based on results of NHTSA testing of system capabilities).

NHTSA used a general process to determine if a crash was avoidable. We examined the system detection zone, vehicle blind zone area, and visible areas surrounding the vehicle. If the pedestrian or cyclist was detectable either visually or by a sensor-based system, then what followed was a cataloguing of all the impediments to a typical, reasonable driver reacting in time after receiving a warning or recognizing a pedestrian or cyclist seen on a rearview video system display.

While many backover crashes are theoretically avoidable, certain characteristics render some incidents impossible to prevent using rear object detection technology, even if the technology and the person using it act appropriately. Consider, for example, a situation where a vehicle is backing along a wall. If a child walks through a gap in the wall and enters the vehicle's path less than 2 feet from the vehicle, the backover would be judged "unavoidable." This is because no known technology could have detected the child through the wall, and no car could brake fast enough to stop in time to avoid the child, once he became visible.

Some backover crashes are avoidable for certain technologies, but not for others, a function that generally corresponds to the detection range of the rear visibility countermeasure. For example, an ultrasonic sensor might have an effective range of only 6 feet, while a rearview video system might be able to effectively display a child positioned 20 feet behind a vehicle. If a vehicle were backing at a relatively high speed toward a child, it might take 10 feet once the brakes were applied to stop the vehicle. In that case, the backover crash would be unavoidable for the vehicle equipped with the sensor system, because it could have only detected the child at 6 feet. On the other hand, the same backover situation would be considered an "avoidable" incident for a vehicle equipped with the rearview video system. This is why the "F_A" factor differs for different technologies.

We note, of course, that merely because a backover crash is avoidable does not mean it will be avoided. Furthermore, drivers differ in their tendencies to check rearview mirrors and rearview video system displays, and may not always react perfectly and with sufficiently fast reaction time. However, those factors are addressed in the two sections below. The avoidability of a situation merely describes whether backover avoidance technology could have had any effect at all on the outcome of the conflict situation.

Based on our analysis of the SCI data, we have derived the following values for the percent of backover crashes that are avoidable using various technologies. Rear-mounted mirrors could prevent up to 49 percent of backover crashes. Sensor technology, on average, could have prevented up to 52 percent of backover crashes. For a rearview video system, NHTSA's analysis concluded that up to 76 percent of backover crashes were avoidance with a 130-degree camera lens and 90 percent of backover crashes were avoidable with a 180-degree camera lens, through which more pedestrians could be seen approaching from the sides of the vehicle.

B. System Performance

Factor "F_S" was derived by determining the ability of the system to detect or display a rear obstacle based on the results of comprehensive NHTSA testing of systems' ability to detect various objects in a laboratory setting. Since mirrors and rearview video systems have the ability to display anything within their field of view, we used a figure of 100 percent effectiveness.[71] Sensors, however, may not always detect an obstacle behind the vehicle, even when the object is within their specified detection zone. This may be the result of the reflectivity of the obstacle, such as if a child's clothing is textured and therefore absorbs the ultrasonic signal. Our specific value for sensor system performance is based on research described at length in the ANPRM. In NHTSA's 2007 study of drivers' ability to avoid a backing crash with an unexpected obstacle while driving a vehicle equipped with a rearview video system either alone or in conjunction with a rear parking system, the sensor-based system detected the rear obstacle in 39 percent of test trials.[72] This value represents the system performance of sensor-based systems in the calculation of overall effectiveness presented in this notice.

C. Driver Performance

Factor F_{DR} represents the degree to which drivers may use the various possible backover avoidance countermeasures to successfully avoid a crash. Unlike many other safety technologies, these countermeasures are only effective at preventing vehicle crashes if they are understood, trusted, and used by drivers. This is a particularly important issue considered in this rulemaking. Currently, drivers are most familiar with the interior and side rearview mirrors required or permitted by FMVSS No. 111. Signals from sensor-based rear object detection systems and images from new mirrors and rearview video system visual

[71] While we realize a component of a rearview video system could malfunction or break or a mirror could break or be misaligned, for purposes of our analysis, we assume they, and sensors, are functioning properly.

[72] Mazzae, E.N., Barickman, F.S., Baldwin, G.H. S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

displays must be noticed, understood, and reacted to by the driver in order to avoid a crash. A system merely detecting or displaying the obstacle in the path of the vehicle is not enough to avoid a crash.

NHTSA has differing concerns related to all three types of technologies currently available for informing a driver of the presence of an obstacle behind a vehicle. With regard to rear-mounted convex mirrors, the primary concern is that the images they provide are too distorted to permit the driver to discern an obstacle within the image. In addition, the range that mirrors display behind the vehicle may be insufficient to allow a driver time to brake to a stop once the driver sees the rear obstacle. With all sensors, drivers may tend to not trust the warnings provided because they may not be able to visually confirm that an obstacle is present in the vehicle's rear blind zone. In addition, if a system is prone to frequent false positive signals, this may cause drivers to ignore, or even turn off, the system, a concern echoed by several commenters. Finally, we are concerned that drivers may have difficulty integrating glances at a rearview video system visual display into their normal glance patterns while backing, focusing more on direct view (glancing rearward over their shoulder) or existing mirrors. In this section, we present the driver performance research that NHTSA has conducted and continues to conduct on currently available system types that are relevant to backover avoidance.

As described in the ANPRM and in Section V of this notice, NHTSA conducted research [73] to assess drivers' ability to avoid backing crashes in a controlled test involving presentation of an unexpected obstacle behind the vehicle while the driver backed out of a garage. The tests were designed so that the crash was always preventable (*i.e.,* an "F_A" factor of 100%) for drivers of vehicles equipped with a countermeasure system. Drivers in the baseline condition whose vehicles were only equipped with standard rearview mirrors could not see the rear obstacle and therefore it was nearly impossible for them to avoid a crash (and none did). The tests were also designed such that the obstruction was detectable by the countermeasure [74] in every trial (*i.e.,* a "F_S" factor of 100%). Therefore, any failure of the driver to avoid crashing into the obstacle should be attributable solely to the driver performance factor.[75] Therefore, NHTSA believes that these experiments isolated, to the extent possible, the effects of driver performance in avoiding a backing crash.

Table 9 summarizes the comparative driver effectiveness results for each of the seven systems assessed. This is how the various "F_{DR}" factor figures were derived, which are used in the overall effectiveness calculations, described below.

TABLE 9—SUMMARY OF CRASH RESULTS IN UNEXPECTED OBSTACLE EVENT BY SYSTEM TYPE

Technology	N	Number of crashes	Driver performance ("F_{DR}" factor) (%)
No system	12	12	0
Rear-mounted convex mirrors	13	13	0
Rear cross-view mirrors	7	7	0
Sensors (ultrasonic and radar) [76]	14	13	7
Rearview video, in-dash, combined with ultrasonic sensors	13	11	15
Rearview video, in-mirror, 2.4-inch display	12	8	33
Rearview video, in-mirror, 3.5-inch display	10	3	70
Rearview video, in-dash	12	7	42

NHTSA[76] has recently completed the third in a series of three studies that examined drivers' use of backing aid systems to avoid crashes while backing. Backing aid systems examined in the studies included rearview video (RV) systems with different display sizes and locations, rear sensor-based systems (RPS), and a combination system having both rearview video and rear sensors. For the five "system" conditions examined in both laboratory (studies 1 and 2) and non-laboratory (study 3, daycare parking lot) settings, the relative crash rates were consistent. Given this observation, once our reduction of the data is complete, we will place these results in the docket and incorporate them for the final rule.

D. Determining Overall Effectiveness

Based on the above strategy of defining the components of effectiveness, we can estimate the overall effectiveness of each of the possible backover avoidance countermeasures examined. Overall, NHTSA's research showed that out of all technologies tested, rearview video systems were the most effective in aiding drivers to avoid backing crashes. With rear-mounted convex mirrors, the research showed that drivers were not inclined to use them in backing situations, presumably due to image distortion and limited range. While sensors may have the potential to show benefits, the research demonstrated that without visual confirmation, drivers tended not to believe the warnings provided by the sensor system, and continued the backing maneuver in spite of the warning. The agency requests comments on what steps could be taken and at what cost and with what consequences to improve the range and sampling rate of sensors, to address problems with detecting pedestrians wearing low reflectivity clothing and to improve driver response to sensor provided warnings. What sort of performance requirement would be needed to ensure that sampling frequency would be increased sufficiently? However, rearview video systems examined were able to consistently display the rear obstacles to the drivers, as well as enable and induce

[73] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[74] This means that the obstacle's image either appeared on the mirror surface, was visible on a rearview video system visual display. For sensors, the obstacle as positioned at the centerline of the vehicle was assumed to be detectable by the system.

[75] However, the ultrasonic sensor-based system used in this testing was found to only detect the centered obstacle in 39 percent of trials.

[76] A radar-based sensor system was not assessed in this test, however, for the purposes of assessing driver performance, sensor technology was deemed not critical in this research.

drivers to avoid them. Table 10 below summarizes these results.

TABLE 10—SUMMARY OF OVERALL EFFECTIVENESS VALUES BY SYSTEM TYPE

System	F_A(%)	F_S(%)	F_{DR}(%)	Final effectiveness (%) $F_A \times F_S \times F_{DR}$ = FE
180° Camera	90	100	55	49
130° Camera	76	100	55	42
Ultrasonic	49	70	7	2.5
Radar	54	70	7	2.7
Mirrors	*33	100	**0	0

* F_A for mirrors is taken from separate source due to lack of inclusion in the SCI case review that generated F_A for cameras and sensors.
** F_{DR} for mirrors is taken from a small sample size of 20 tests. It is 0% because throughout testing, drivers did not take advantage of either cross-view or lookdown mirrors to avoid the obstacle in the test.

VII. Proposal To Mandate Improved Rear Visibility

Based on the comments on the ANPRM and NHTSA's research on the various means available to mitigate backover crashes, NHTSA has developed the following proposal to improve light vehicle rear visibility. The proposal is based in part on our tentative conclusion that drivers need to be able to see a visual image of a 32-inch tall cylinder with 12-inch diameter behind the vehicle over an area 5 feet to either side of the vehicle centerline by 20 feet in longitudinal range from the vehicle's rear bumper face. We are also proposing to specify certain performance criteria for visual display performance, such as luminance and rearview image response time, which are detailed below, as well as durability requirements. We believe that these specifications are necessary to ensure robust and effective performance.

These proposed improvements would apply to all passenger cars, MPVs, trucks, buses, and low-speed vehicles with a GVWR of 10,000 pounds or less. Based on the substantial numbers of fatalities and injuries involving light vehicles other than LTVs, we are not proposing to limit these more stringent rear visibility performance requirements to LTVs only. Further, despite NHTSA's decision to propose a requirement for improved rear visibility for nearly all light vehicles, we have included in the preliminary regulatory impact analysis an economic analysis of an alternative in which only LTVs are subjected to these requirements. We invite comments on this additional analysis.

In the near term, we believe that existing rearview video systems can be used to meet the requirements with minimal or no modifications. While we recognize that there are significant costs involved in addressing the safety problem at issue using rearview video systems, we believe that our research shows that rearview video systems currently represent the most effective technology to address the problem of backover crashes. This is because rear-mounted convex mirrors and sensor-based object detection systems offer few benefits compared to rearview video systems due to system performance and driver use issues. As we have previously said, use of a blind zone area threshold to focus the improve visibility requirements on vehicles with large rear blind zone areas, and presumably high backover crash rates, from these enhanced rear visibility requirements lacks a sufficient statistical basis while adding problematic issues. Some vehicles with comparatively small blind zones had high rates of backover incidents. Similarly, limiting countermeasures to LTVs, such as vans, multipurpose passenger vehicles, and trucks with a GVWR of 10,000 pounds or less, would leave large gaps in safety protection as well as a disparity in quality of rear visibility between these vehicles and passenger cars.

In response to the suggestion of many commenters that, regardless of how broadly or narrowly the performance requirements are applied within the population of light vehicles, the requirements be technology-neutral, we believe we need to consider the practical consequences that adopting a technology neutral approach would have not only for the first phase of a backover crash, but also for each of the later phases. Adequate performance at the initial phase does not necessarily assure adequate performance at a later phase. The ultimate safety test of a technology in the context of this rulemaking is whether the technology enables the driver to detect the presence of a pedestrian in or near the path of the driver's backing vehicle *and* whether drivers use the technology and succeed in avoiding backover crashes.

Under our proposal, current rear object detection sensors and rear-mounted convex mirrors would not be sufficient as stand-alone technologies to meet the proposed rear visibility requirement. This is because sensors and mirrors, while able to detect pedestrians to some degree, simply do not induce the driver response needed to prevent backover crashes. NHTSA research indicates that the presence of a system consisting of rear-mounted convex mirrors was statistically equivalent to the absence of any system at all for seeing pedestrians behind a driver's vehicle. Therefore, we do not believe that any benefits would accrue from installation of rear-mounted convex mirrors.

With regard to sensors, our research shows [77] that, in the vast majority of cases, a sensor-activated warning of the presence of an obstacle will not lead to a successful (*i.e.,* timely and sufficient) crash avoidance response from the driver unless the driver is also provided with visual confirmation of obstacle presence. Because of this apparent need for visual confirmation and that the fact that sensors induced a successful driver reaction only 7 percent of the time in NHTSA testing, we do not believe it is in the best interest of safety to propose allowing systems that rely on sensors alone.

However, we note that we are not proposing to disallow sensor systems as a supplement to rearview video systems. While NHTSA research[78] showed 27 percent worse driver crash avoidance performance in a vehicle equipped with both a rearview video system and rear sensors than in a vehicle with only rearview video, deficiencies in the performance of the sensor system may have confounded the isolation of driver performance. It is thus unclear to what extent the presence of sensors may

[77] Research by GM also showed this apparent tendency of drivers to want visual confirmation of obstacle presence.

[78] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

induce some drivers to rely on the sensors to some extent instead of relying exclusively on close and uninterrupted monitoring of the video display. To the extent that drivers rely on sensors and to the extent that the sensors fail to detect objects, driver crash avoidance performance will worsen. We seek comment on this issue. Furthermore, the cost of a combined rearview video and sensor system would be higher than that of a rearview video system alone.

Finally, while NHTSA is not at this time proposing to mandate advanced multi-technology countermeasure systems, we note that research continues. These systems may include video-based systems with real-time image processing for object detection and combinations of sensors and video cameras, some of which (detailed by commenters) include sensor-based graphic overlays superimposed over visual images from rearview video systems. Advances like infrared detection, automated braking, and backing speed limitation were all concepts raised either by commenters or NHTSA analysis.

A. Proposed Specifications

Our general approach in developing performance requirements was to consider the various phases of backover crashes and identify key areas of performance pertinent to overall system effectiveness. In the absence of existing consensus industry standards, we reviewed existing systems and determined which aspects of performance should be addressed in the regulatory text of this proposal. Based on the systems we have tested and comments on the ANPRM, we believe that existing systems generally meet our proposed specifications and in cases in which they do not, changes could be made with minimal cost impact. For example, it is likely that existing systems would meet our durability requirements because they are typically subjected to vehicle level tests involving harsher conditions than we are proposing. Both vehicle and equipment manufacturers cited low warranty claim rates for rearview video systems in their comments. This indicates to us that today's systems are proving durable in typical driving conditions. Similarly, while some current systems would not satisfy our maximum image response time requirement, a change to the vehicle to prioritize display of the rearview video image over navigation software would significantly improve image response time with minimal cost.

i. Improved Rear Field of View

To determine the appropriate minimum width of the required visible area, NHTSA reviewed both available SCI backover case data and our Monte Carlo analysis of backover crash risk as a function of pedestrian initial location. While some small risk exists as far as 9 feet laterally to the left and right of a rearward extension of a vehicle's longitudinal centerline, the vast majority of the risk is concentrated within a 10-foot wide area that extends symmetrically only 5 feet laterally to either side from the extended centerline. Accordingly, NHTSA proposes that the required area of improved visibility be this 10-foot wide area that is centered on the vehicle's centerline.

To determine the appropriate minimum longitudinal range (*i.e.,* length) of the area that should be specified to maximize the feasibility and effectiveness of the proposal in reducing backover crashes, NHTSA considered comments on the ANPRM, SCI backover case data, and the results of our Monte Carlo analysis. Using the 58 SCI backover cases, NHTSA examined the distance the vehicle traveled prior to striking the pedestrian. Figure 4 shows the percent of cases encompassed by various ranges of longitudinal distance. These data show that in 77 percent of SCI backover cases the vehicle traveled 20 feet or less before striking the victim. The Monte Carlo analysis of backover crash risk as a function of the pedestrian's initial location used a distribution of actual backing maneuver travel distances based on those observed in naturalistic backing maneuvers made by test participants in NHTSA's research study that examined drivers' use of rearview video systems.[79] The Monte Carlo analysis, which was outlined in Section II.C.v, indicated based on computer simulation that the highest risk for pedestrians being struck is within a range of 33 feet aft of the rear bumper. Given that actual backover SCI case data are available, NHTSA proposes a longitudinal range for rear visibility coverage of 20 feet extending backward from the rearmost point of the rear bumper based on those rear-world data.

[79] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

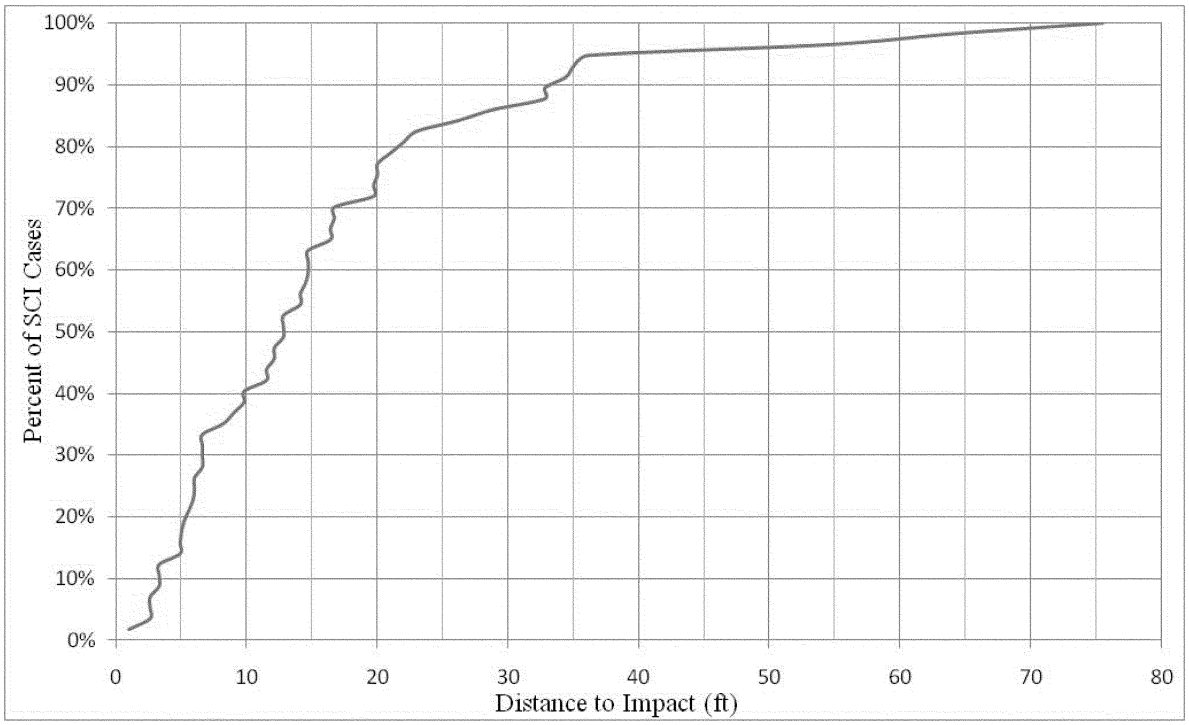

Figure 4. Percent of SCI Backover Cases as a Function of Distance to Impact

To ensure adequate visibility of this area, the agency is specifying the placement of seven test objects (cylinders) within the area. Given the size of the area and the locations of the cylinders within the area, we believe that a view of the entire area can be captured through the installation of a single video camera that has a minimum 130-degree horizontal angle and is located at or near the centerline of the vehicle. For that reason, NHTSA's analysis has used the estimated costs and benefits of a rearview video system with a 130-degree video camera.

ii. Visual Display Requirements

The following sections describe the proposed requirements for visual displays used to present images of the area behind a vehicle. NHTSA believes these requirements are important to achieving reasonable system effectiveness. Further, we note that one potential concern expressed to NHTSA is that specifying requirements could increase costs for display manufacturers by requiring them to conduct expensive certification tests of equipment. We note that the requirements proposed today are vehicle requirements, not equipment requirements, and so we do not believe that equipment manufacturers will be unduly burdened.

a. Rearview Image Size

NHTSA is proposing a performance requirement of at least 5 minutes of arc [80] for the displayed size (*i.e.,* how large the cylinders appear) in the rearview image of three test cylinders (cylinders A, B, and C) that are located 20 feet aft of the rearmost point on the vehicle's rear bumper. Specifically, we are proposing to require that when the images of these three test cylinders are measured, the average size of the three displayed test cylinders must not be less than 5 minutes of arc. Additionally, the displayed size of each of the three displayed test cylinders individually must not be less than 3 minutes of arc. NHTSA does not believe that there is a need to propose displayed size requirements for any of the other test cylinders, because the three furthest test objects will always appear the smallest, thus representing the worst case visually observable condition for the 7 cylinders, and any additional measurements would be an unnecessary burden.

The reason for proposing 5 minutes of arc for the average displayed size of the test cylinders is that NHTSA believes this is the minimum size needed for non-professional drivers to distinguish and react to images. The 3 and 5 minutes of arc figures are based on research originally published by Satoh, Yamanaka, Kondoh, Yamashita, Matsuzaki, and Akisuzuki in 1983.[81] Satoh et al examined the relationship between an object's subtended visual angle [82] at a person's eyes and a person's subjective ability to see the object and to make judgments about what he or she is seeing. Satoh asserted that an object must subtend at least 5 minutes of arc for a person to be able to make judgments about the object.

To date, NHTSA has based its requirements for minimum image size (the minimum subtended visual angle at the driver's eyes) on the Satoh et al. research. The school bus cross view mirror requirements in FMVSS No. 111 are based in part on the Satoh

[80] A minute of arc is a unit of angular measurement that is equal to one-sixtieth of a degree.

[81] Satoh, H., Yamanaka, A., Kondoh, T., Yamashita, M., Matsuzaki, M., and Akisuzuki, K., "Development of a Periscope Mirror System," *JSAE Review,* November 1983.

[82] The angle which an object or detail subtends at the point of observation; usually measured in minutes of arc. If the point of observation is the pupil of a person's eye, the angle is formed by two rays, one passing through the center of the pupil and touching the upper edge of the observed object and the other passing though the center of the pupil and touching the lower edge of the object.

research.[83] For example, paragraph S9.4 of FMVSS No. 111 requires a school bus cross-view mirror to show the driver a specified child surrogate test object located at a specified location with a subtended visual angle of at least 3 minutes of arc for the worse case test object, cylinder "P". The rationale for using a visual angle value less than 5 minutes of arc for the school bus mirror requirements is threefold.

First, school bus drivers must be specially licensed before they can drive a school bus carrying children. They are required to obtain a Commercial Drivers License with a School Bus Endorsement. The training required to obtain this special license and the necessity of being vigilant in all types of crashes in order to retain their license and employment is expected to increase school bus drivers' awareness of the possibility of pedestrians suddenly entering danger areas around their bus. The combined effect of this training and the necessity for attentiveness is expected to encourage drivers to pay more attention to small images that are visible in a bus's mirrors.

Second, school bus drivers are specifically trained in the use of their bus's cross view mirrors. In the late 1980's, when the school bus cross-view mirror requirements of FMVSS No. 111 were being developed, 49 states plus Washington, DC[84] required annual training for all school bus drivers in the use of their bus's cross view mirrors. This training is expected to allow drivers to make better use of very small images that they see.

Third, school bus cross-view mirrors are intended to be used before the bus begins to move, while the bus is stationary. As a result, drivers can take as much time as they need to determine what they see in their bus's cross-view mirrors. In contrast, in the passenger vehicle environment, drivers may use the display while the vehicle is stationary and while the vehicle is in motion backing up (albeit at fairly low speeds). As a result, drivers may have limits on the amount of time that they may use to determine what they are seeing in a rearview video display. Again, this argues for a larger minimum image size requirement.

NHTSA considered whether the image size criterion used for school bus cross-view mirror requirements currently in FMVSS No. 111 should also be applied to rearview images required for passenger vehicles. After careful consideration, NHTSA has concluded it is appropriate to propose a stronger requirement for passenger vehicles since passenger vehicle drivers do not have the same vehicle and system (*e.g.,* mirror use) training as school bus drivers do, nor do passenger vehicles typically use the systems in a stationary scenario. Based on this, the Satoh-recommended 5 minutes of arc subtended visual angle requirement is warranted and therefore recommended as a minimum performance requirement.

Based upon NHTSA test data from an examination of a 2007 Honda Odyssey minivan fitted both with an original equipment (from a 2008 Honda Odyssey) 2.4-inch diagonal rearview video display and an original equipment 3.5-inch diagonal rearview video display (from a GM vehicle), NHTSA estimates that a 2.8-inch or larger diagonal rearview video display in the interior rearview mirror would be necessary to meet the proposed 5 minutes of arc requirement for this vehicle.

b. Image Response Time

Image response time is the time delay between the moment the vehicle's transmission is shifted into reverse gear, and the moment which an image to the rear of the vehicle is displayed. For vehicles in which an existing navigation system visual display is used to display a rearview video image, we believe that adopting a maximum image response time value will prevent manufacturers from giving priority, at ignition, to the loading of navigation system applications instead of the rearview video applications. We believe that giving display priority to a rearview video system image should increase the effectiveness of such systems in preventing backing crashes. As stated previously, NHTSA is concerned that if the display takes too long to appear, drivers will be more likely to begin a backing maneuver before the image of the area behind the vehicle is displayed. Given the importance of the "initial check" behind the vehicle, a long image response time could have a strong negative effect on the overall effectiveness of a rearview video system. As an appropriate balance between the importance of a quickly provided image and the need for sufficient opportunity to conduct system checks as noted in the ANPRM comments (see section IV.G), NHTSA proposes a 2.0-second maximum image response time after the vehicle's transmission is shifted into reverse based on the minimum time in which such system checks can be conducted.

c. Image Linger Time

Image linger time refers to the period in which the rearview video image continues to be displayed after the vehicle's transmission has been shifted out of reverse gear. In the ANPRM, NHTSA indicated that a maximum of 8 seconds of linger time may be appropriate after the vehicle is shifted from the reverse position. Based on their observations of drivers making parking maneuvers, the AAM recommended a maximum linger time of 10 seconds or an alternative speed-based value in which the rearview video display would turn off when the vehicle reach a speed of 20 kph (12.4 mph).Similarly, GM recommended a maximum linger time of 10 seconds or a speed-based limit of 5 mph (8 kph). Based on commenters' findings regarding actual, observed maneuver durations, NHTSA is proposing a time-based maximum linger time of 10.0 seconds to better aid to the driver.

d. Visual Display Luminance

We believe it is appropriate to adopt a minimum visual display luminance value to ensure that the rearview video system visual display image is adequately visible in varying conditions, such as bright sunlight or low levels of ambient light. Adequately visible, in this case, would mean that a driver can discern the presence of and identify obstacles displayed within the rearview video image. Gentex recommended that a brightness level of 500 cd/m^2 for in-mirror displays as measured at room temperature and in a dark room, and said that it has been confirmed by vehicle manufacturer research to be the minimally accepted value, presumably to account for a wide possible range of ambient conditions. Therefore, we are proposing a minimum visual display luminance requirement of 500 cd/m^2 for rearview image displays.

e. Other Aspects of Visual Display

NHTSA also requires comments regarding other aspects of visual display and image quality performance such as image resolution, minification, distortion, contrast ratio and low-light performance as well as regarding display location. While existing systems may perform well with regard to these aspects of performance, there is no certainty that future systems will be designed to perform as well. Depending on the public comments and other available information, we may include requirements on some or all of these aspects of performance in the final rule.

[83] Garrott, W.R., Rockwell, T.H., and Kiger, S.W. (1990). Ergonomic Research on School Bus Cross View Mirror Systems. National Highway Traffic Safety Administration, DOT 807 676.

[84] California had no such requirement.

If we were to include requirements for some aspects, how should those aspects be regulated, at what level of stringency, and why? For example, what test procedures should be used for measuring these aspects of performance? Do any existing voluntary consensus standards have test procedures that would be appropriate for assessing performance?

iii. Requirements for External System Components

We believe that for rear visibility systems to be effective in preventing real-world crashes, it is imperative that they perform across a wide range of environments typically encountered by drivers. For example, such systems should operate in various temperature ranges and should not be rendered inoperable by conditions such as rain or normal corrosion.

As part of our technical review, we considered the possibility of adopting requirements from industry consensus standards. Unfortunately, such standards do not currently exist as manufacturers have indicated they consider their internal technical specifications for such systems to be proprietary. It is the agency's understanding that no such industry consensus standards will be developed and available for consideration within the timeframe of the current rulemaking process.

Therefore, we reviewed existing requirements in our safety standards for other vehicle equipment in these areas. We believe there is merit in reviewing existing requirements for exterior motor vehicle equipment, such as lighting, particularly because components such as video cameras utilized in rearview video systems are typically mounted near rear lamps and subject to the same environmental conditions. While we considered that some vehicle manufacturers may conduct indirect vehicle level environmental tests that could potentially address some of these areas of interest, we noted that such testing is not required and that there is no basis to believe all vehicle manufacturers would adopt similar criteria. Therefore, based on the requirements outlined in FMVSS No. 108 for lighting, we are proposing requirements for the following areas to address rear visibility system external component durability: Salt spray (fog), temperature cycle, and humidity.

We believe a salt spray evaluation will address both the necessary corrosion performance, as well as general moisture resistance required so that rear visibility systems can deliver the expected effectiveness to motorists in the real world. We are proposing that exterior components used in rear visibility systems application meet the required minimum performance of exterior lamps, which are required to be tested in accordance with ASTM B117–73, Method of Salt Spray (Fog) Testing for a total period of 50 hours. The 50 hour total period is comprised of 2 identical periods of 24 hours of exposure followed by 1 hour of drying time. We believe that this standardized test procedure is a reasonable proxy for normal environmental conditions. At the end of the test, the system would still be required to meet the visibility and field of view requirements.

We believe a specification combining temperature cycles and humidity levels is appropriate to establish the ability of rearview video systems to provide the anticipated level of effectiveness across a range of real world driving conditions. We are proposing to require that systems operated across both a high and low temperature range, with varying humidity level. Again, at the conclusion of the proposed test cycles, the system would be required to function within acceptable limits.

B. Proposed Compliance Tests

i. Ambient Lighting Conditions

NHTSA believes that the ambient lighting conditions present for testing should mimic the lighting conditions in which the visual displays will be used. To ensure test repeatability, NHTSA believes that ambient lighting of a particular brightness level should be specified for testing. Daytime outdoor lighting (sunlight and varying degrees of cloud cover) ranges from 10,000 lux to 100,000 lux in full sunlight.[85] NHTSA believes that the lower end of this brightness range should be used for testing to mimic the most typical manner of incidence of the sun's rays upon a console-mounted rearview image, which would involve at least some degree of obstruction by the vehicle's roof. Therefore, we propose that testing be conducted with evenly distributed lighting of 10,000 lux intensity as measured at the center of the exterior surface of vehicle's roof. While actual natural sunlight may strike an in-vehicle display at various angles through the day, for the purpose of test repeatability we believe that ambient lighting during testing should be provided by overhead light sources with the light presented in an evenly distributed manner. Because the overwhelming majority of backover crashes occur during the day, we are not proposing testing under nighttime ambient lighting conditions.

ii. Rear Visibility Test Object

For the purpose of determining compliance with the performance requirements specified in the preceding sections, NHTSA is proposing that a cylindrical test object be used for testing. Specifically, the agency is proposing the test cylinder be a 32-inch tall cylinder with a diameter of 12 inches to represent the approximate height and width of an average, standing 18-month-old child. The age of 18 months was selected based upon the agency's review of SCI backover cases and consideration of comments on the ANPRM. We believe that a test object with these dimensions is necessary to ensure robust performance not only of a countermeasure system's ability to meet specified coverage area requirements behind a vehicle, but also the system's ability to display an image of a rear obstacle to a driver.

In developing the characteristics of the test object, NHTSA reviewed its own research, real world crash data, industry research, existing test procedures, and comments on the ANPRM. NHTSA considered and evaluated a number of different options ranging from crash dummies, clothing mannequins, and polyvinyl chloride (PVC) pipe to traffic cones for use as possible compliance test objects. NHTSA also considered using a child-shaped, clothing mannequin identified by the agency's Advanced Collision Avoidance Technology (ACAT) Backing Crash Countermeasure Program as having a radar cross-section equivalent to that of a small child. However, this shape is not proposed since the sensitivity of the test object to radar detection is not relevant to the evaluation of a visual rearview image and the asymmetrical shape of the mannequin would cause rearview image quality measurement difficulties. Given that the test object is intended to be used both to confirm countermeasure coverage area and test cylinder displayed size, a shape that is conducive to accurate completion of both tests is needed. While the shape of the test object is not critical for assessment of countermeasure coverage area as long as the object's dimensions are appropriate, use of a sided shape could cause measurement difficulties when assessing visual display image quality. A cylindrical test object with a vertical axis would appear to have the same relative width regardless of the angle at which it is viewed and would not appear skewed, as a square column might. A cylindrical test object is also

[85] Ander, Gregg D. (1995). Daylighting performance and design. Wiley, John & Sons, Incorporated.

suggested by the requirements of ISO 17386 that specify use of a cylinder to test the detection performance of ultrasonic parking aids. Therefore, the proposed test object shape consists of a cylinder with a vertical axis that can adequately represent the proportions of the children most commonly at risk in backover scenarios while at the same time ensuring robust system performance.

To best represent the manner in which a child is displayed to the driver in a rearview image, NHTSA proposes that the cylindrical test object shall have a diameter of 12 inches to represent the width of an average 18-month-old child. Based on 2000 CDC data for the head breadth an 18-month-old child, NHTSA proposes 5.9 inches (15 cm) as the minimum width that must be visible in the rearview image for the three test objects located nearest the rear bumper of the vehicle.[86] To aid in the assessment of whether the minimum width is visible, a contrasting colored vertical stripe of width 5.9 inches is proposed for the two cylinders closest to the vehicle.

Furthermore, given that the visual appearance of the test object is the dominant factor in the compliance test, we do not believe that we need to specify material properties at this time. While ultrasonic and radar sensors are better at detecting some materials and surface textures than others, rearview video systems display images of objects of all opaque material types. For these reasons, NHTSA is proposing that the test object merely consist of a cylindrical object of the dimensions specified above. However, we note that if in the future sensor-based systems are developed that may fulfill the requirements of providing to the driver a visual image of the area behind the vehicle, alternative test object material characteristics and dimensions may need to be specified in order to ensure that the object accurately simulates the physical presence of an 18-month-old child to the particular sensor technology being used.

To provide a consistent and repeatable location in which to measure apparent test object width as part of rearview image quality assessment, NHTSA proposes that the three rearmost test objects be constructed with a 5.9-inch high colored band surrounding the perimeter of the upper portion of the cylinder that is of a different color than the rest of the cylinder. The 5.9-inch dimension is based on the breadth of the average 18-month-old child's head.[87] The band can be of any color that contrasts with that of the rest of the test object.

iii. Rear Visibility Compliance Test Procedures

NHTSA is proposing a test to ensure that a rearview image provided to the driver (1) covers the required area behind the vehicle and (2) displays the images of obstacles with sufficient size to permit a driver to visually perceive their presence. The test procedure used to determine countermeasure performance in terms of rearview video system viewable area is similar to that currently used for school bus mirrors (Section 13, "School bus mirror test procedures" of FMVSS No. 111, "Rearview mirrors"). Like the school bus mirror test, the proposed test uses a large format camera placed with the imaging sensor located at a specific eyepoint location, referred to here as the "test reference point". A matte finish ruler affixed beneath the visual display and aligned laterally along the bottom edge of the visual display provides a reference for scaling purposes in the image quality portion of the test procedure.

The proposed test reference point is intended to simulate the location of a 50th percentile male driver's eyes (rather than the 95th percentile male used in existing FMVSS No. 111 rearview mirror requirements) when glancing at the rearview image. Based on observations of drivers using rearview video systems in NHTSA testing,[88] we assume that for visual displays located in the vicinity of the center console or interior rearview mirror, the driver will turn his or her head to look at the display with little or no lateral eye rotation. Therefore, to estimate the location of the driver's eyes when looking at a rearview image, the forward-looking eyepoint of the driver can be simulated to rotate toward the center of the vehicle as though the driver is turning his head. Anthropometric data from a NHTSA-sponsored study of the dimensions of 50th percentile male drivers seated with a 25-degree seat-back angle ("Anthropometry of Motor Vehicle Occupants"[89]) give the longitudinal and vertical location, with respect to the H point, of the left and right infraorbitale (a point just below each eye) and the head/neck joint center at which the head rotates about the spine. Given an average vertical eye diameter of approximately 0.96 inch (24 mm), we can assume that the center of the eye is located 0.48 inches (12 mm) above the infraorbitale. Taking the midpoint of the lateral locations of the driver's eyes gives a point in the mid-sagittal plane (the vertical/longitudinal plane of symmetry of the human body) of the driver's body indicated by M_f in Figure 5. Using the point at which the head rotates, M_f can be rotated toward the rearview image to obtain a new eyepoint, the test reference point, representing an eye midpoint for a driver when the head is turned to look at a rearview image. The proposed regulatory requirement sets forth clear instructions as to how to position the camera to conduct the test.

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[86] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001).

[87] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001).

[88] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[89] Schneider, L.W., Robbins, D.H., Pflüg, M.A. and Snyder, R.G. (1985). Anthropometry of Motor Vehicle Occupants; Volume 1—Procedures, Summary Findings and Appendices. National Highway Traffic Safety Administration, DOT 806 715.

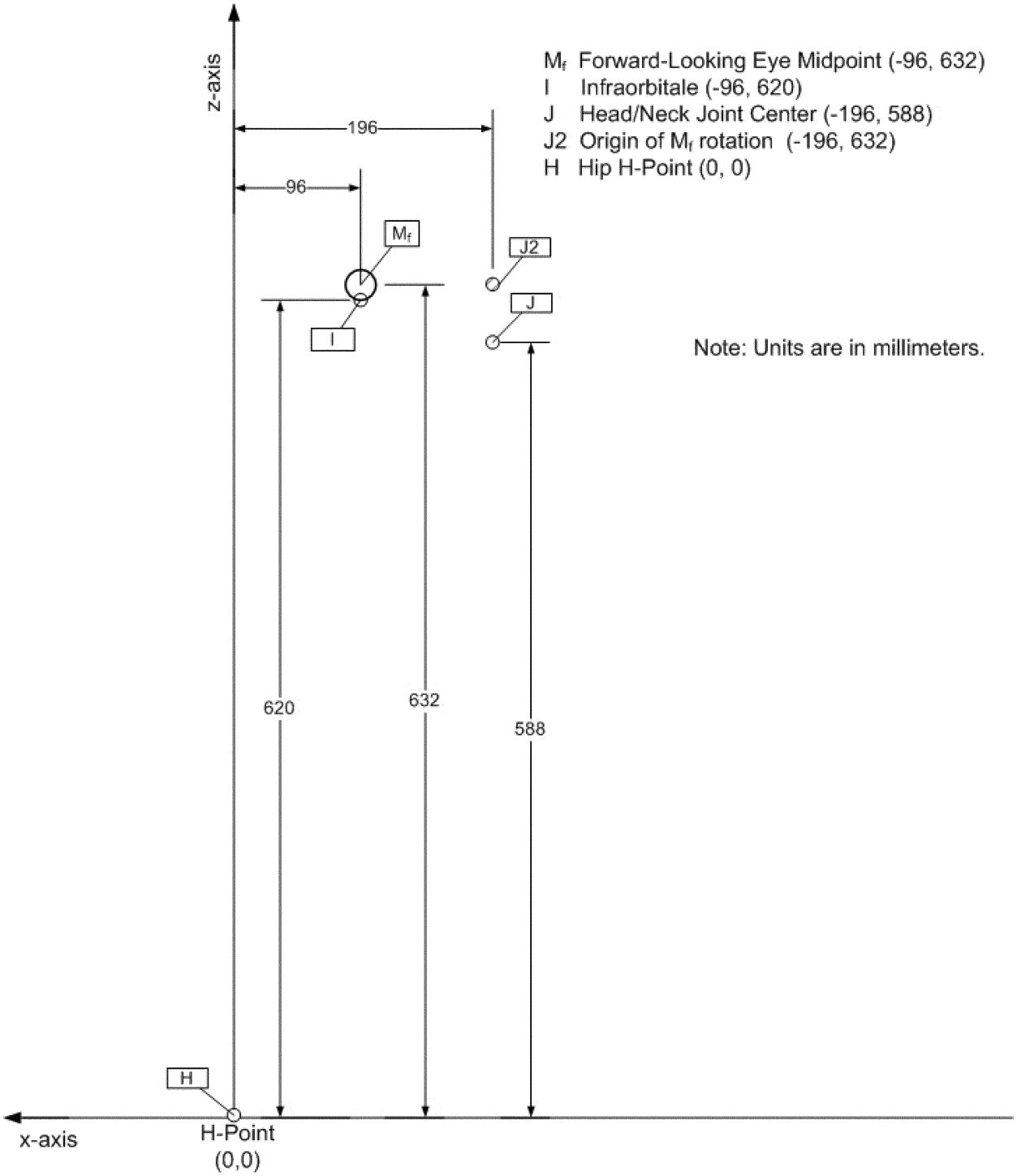

Figure 5. Coordinates of the Forward-Looking Eye Midpoint and Joint Center of Head/Neck Rotation of a 50th Percentile Male Driver with respect to the H point in the Sagittal Body Plane

a. Rear Field of View Test Procedure

To demonstrate a system's compliance with the field of view requirements, we are proposing that the perimeter of the minimum detection area that must be visible is marked using seven test objects. The locations of the seven test objects, represented by black circles, are illustrated in Figure 6.

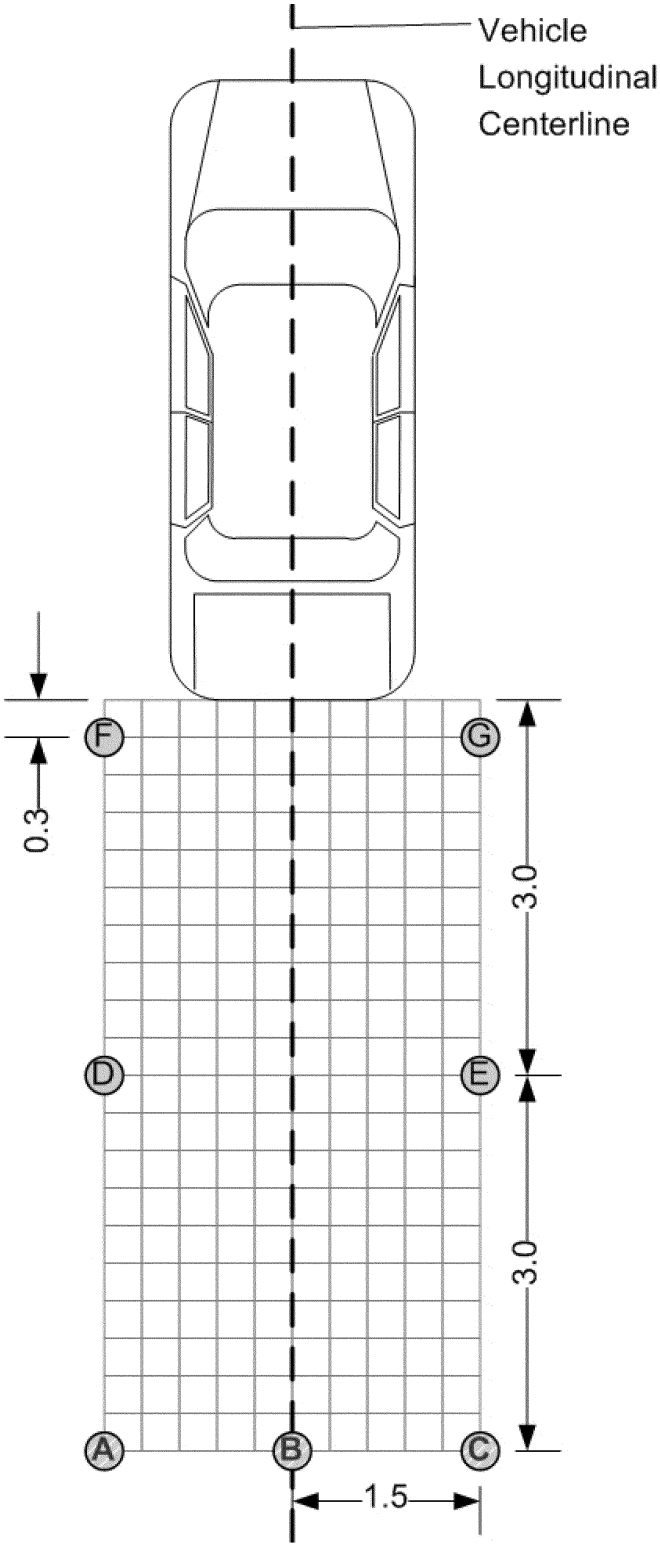

Figure 6. Countermeasure Performance Test Area Illustration and Required Test Object Locations (Units are meters)

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For school bus cross-view mirrors, FMVSS No. 111 requires that the entire top surface of each cylinder must be visible. However, due to the potential for rearview video cameras to be mounted at heights of less than 32 inches on some compact cars and sporty vehicles, NHTSA is proposing an alternative detection criterion for this test. For test objects located 10 or more feet aft of the vehicle's rear bumper, NHTSA proposes that the entire height and width of each test object must be visible. This criterion equates to the driver being able to see the entire body

of an 18-month-old child and serves to ensure that detection of a child, if present, between 10 and 15 feet behind the vehicle is possible.

Due to camera angle, only a portion of a child or child-sized object in close proximity to the rear bumper may be visible, particularly at the edges of the camera's viewing angle. To ensure that at least a portion of test objects 'F' and 'G' (in Figure 6) are visible, the proposed compliance test positions them 1 foot aft of the rear bumper face. To give the driver enough information to be able to discern an "object" as a child, if present, and to provide a quantitative basis for assessing field of view compliance, NHTSA believes it is important to indicate how much of the test objects must be visible. Seeing a child's face or another body area of similar size would likely result in successful visual recognition of the child by the driver. Therefore, NHTSA proposes that a minimum of a 5.9-inch width of test objects 'F' and 'G' must be visible.[90] This criterion would result in a 5.9-inch square or larger portion of an object or child being visible.

For NHTSA compliance testing, the displayed rearview image would be photographed to document the test results of this field of view test, as well as to provide data for use in completing the image quality test, which is described in the next section.

b. Rearview Image Size Test Procedure

As stated previously, industry standards applicable to an image-based rear visibility system do not exist. Therefore, to develop a method for assessing image quality, NHTSA looked to its prior work relating to school bus cross-view mirrors. The test procedure described below follows the same basic concept as the existing school bus mirror test procedure in FMVSS No. 111. This test serves to ensure that a minimum image quality is maintained throughout the required coverage area of the rearview image. Essentially, we are proposing that the apparent image of the individual test objects be large enough for an average driver to quickly determine their presence and nature.

The test procedure proposed for use in assessing countermeasure visual display image quality compliance requires one additional step beyond the rearview video system viewable area test described above. Using the printed photograph of the rearview image taken to document the viewable area covered by the system, the size of each of the three test objects positioned 20 feet aft of the rear bumper (indicated in Figure 5 labeled 'A', 'B', and 'C') is measured. The horizontal width of each of the three test objects is measured within the colored band surrounding the upper portion of the cylindrical test object by selecting a point at both the left and right edges of the object's displayed image. Similarly, two points on the ruler shown in the photograph are selected to acquire a measurement for use as a lateral scaling factor. Using the two measure widths and the distance between the driver's eyepoint (*i.e.,* midpoint between an average 50th percentile male's eyes) and the center of the rearview image, the visual angle subtended by each test object may be calculated. To reduce the effects of measurement errors, the measured visual angle subtended from each of the three test objects (A, B, and C) are averaged together. Acceptable image quality is defined as the average measured visual angle subtended by the test object's width from these three locations exceeding 5 minutes of arc. The average value is used to assess compliance to minimize the effect of individual measurement error. The subtended visual angle for each of the three locations must exceed 3 minutes of arc.

C. Proposed Effective Date and Phase-In Schedule

In accordance with the schedule set forth by Congress in the K.T. Safety Act, we are proposing that the requirement for rearview video systems be phased in within four years of publication of the final rule. Because we anticipate that a final rule will be published in early 2011, the statutory requirement would require that full compliance be achieved in late 2014 or early 2015. Furthermore, because we anticipate that this rule will require substantial design work to implement, we are proposing that, like other substantial rules, the compliance dates for the various stages of the phase-in be September 1 of the relevant year, in order to correspond with model years. Therefore, given the likely schedule of this rulemaking, we are proposing that full compliance be achieved by September 1, 2014.

NHTSA is concerned about the potential costs imposed on automotive manufacturers by this proposal, and is therefore taking into account both the current and projected future implementation of rearview video systems in our proposed phase-in schedule. Another factor that is being taken into consideration is the vehicle redesign cycle. Specifically, we are aware that it could cost substantially more to implement the best available technology (*i.e.,* rearview video systems) into vehicles if it is not done during the normal vehicle design cycle. We are aware, for example, in comments received from Honda that the statutory deadline may not provide enough time for most vehicles to undergo a redesign before full compliance is required. In its comment, AIAM suggested that a 6-year phase-in schedule, rather than a 4-year one, might be needed in order to assure that the substantial majority of affected vehicles can integrate rearview video systems as part of their normal redesign cycle. The agency appreciates the challenges posed by the proposed rule, but notes that a phase-in period longer than four years would be inconsistent with the limitation specified by Congress.

With the above considerations, we are proposing a rear-loaded phase-in schedule. For the year following the first September 1 after publication of the final rule (likely to be September 1, 2011), we are proposing a compliance target that is less than the total number of vehicles already anticipated to be equipped with rearview video systems. The proposed phase-in schedule then requires steady increases in the total percentage of the compliant vehicles in the two following years, based on these considerations and the percentage of vehicles that are anticipated to undergo a scheduled redesign. Finally, we are proposing to apply the requirements to all vehicles manufactured on or after September 1 of the following year (likely 2014). The specific percentages of the phase-in schedule are shown in Table 11 below.

TABLE 11—PROPOSED PHASE-IN SCHEDULE

	Percent
Vehicles manufactured before September 1, 2011	0
Vehicles manufactured on or after September 1, 2011, and before September 1, 2012	0
Vehicles manufactured on or after September 1, 2012, and before September 1, 2013	10
Vehicles manufactured on or after September 1, 2013, and before September 1, 2014	40
Vehicles manufactured on or after September 1, 2014	100

Furthermore, we are proposing that small volume manufacturers need only comply with the requirement for

[90] The 5.9-inch dimension is the average breadth of an 18-month-old child's head per CDC's "Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles" and "Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles." Published May 30, 2000 (modified 4/20/2001).

rearview video systems when the requirement has been fully phased in, that is, on September 1, 2014. This is based in part on the comment from AIAM, which requested this provision for small volume manufacturers due to their longer product life cycles and their reduced access to technology.

The reasons for allowing small volume manufacturers a delay in the compliance schedule are twofold. First, because these manufacturers generally produce a single or low number of lines of vehicles, they would need to install these systems on a large portion or all of their fleet in order to meet the fleet percentage requirement. Considering that the installation of rearview video systems is most efficiently accomplished during a vehicle redesign, this would mean that small volume manufacturers are disproportionately negatively impacted by the requirement because they would likely have to install these systems in the middle of the design cycle, increasing their costs. Second, because small volume manufacturers frequently have longer product cycles than larger manufacturers, the need for a delay until the end of the compliance increases the likelihood that they will have the opportunity to integrate the rearview video system with their normal redesign cycle. While we believe that rearview video systems and displays are readily available so that small volume manufacturers will have access, we believe that the other two reasons are adequate to delay mandatory compliance until the end of the phase-in period.

We are also proposing to include provisions under which manufacturers can earn credits towards meeting the applicable phase-in percentages if they meet the new rear visibility requirements ahead of schedule. In addition, as we have done with other standards, we are proposing a separate alternative schedule to address the special problems faced by limited line and multistage manufacturers and alterers in complying with phase-ins. A phase-in generally permits vehicle manufacturers flexibility with respect to which vehicles they choose to initially redesign to comply with new requirements. However, if a manufacturer produces a very limited number of lines, a phase-in would not provide such flexibility. NHTSA is accordingly proposing to permit "limited line" manufacturers that produce three or fewer carlines the option of achieving full compliance when the phase-in is completed. Flexibility would be allowed for vehicles manufactured in two or more stages and altered vehicles from the phase-in requirements. These vehicles would not be required to meet the phase-in schedule and would not have to achieve full compliance until the phase-in is completed. Also, as with previous phase-ins, NHTSA is proposing reporting requirements to accompany the phase-in.

D. Summary of Estimated Effectiveness, Costs and Benefits of Available Technologies

i. System Effectiveness

Some systems, like airbags, have binary states; that is to say that either they are activated or they are not. Analysis includes a probability of whether or not it was being used, followed by a calculation of benefits in cases where it was in use.

For rear visibility technologies, three conditions must be met for such a technology to provide a benefit to the driver. First, the crash must be one that is "avoidable" through use of the device; *i.e.,* the pedestrian must be within the target range for the sensor, or the viewable area of the camera or mirror. Second, once the pedestrian is within the system's range, the device must "sense" that fact, *i.e.,* provide the driver with information about the presence and location of the pedestrian. Third, there must be sufficient "driver response," *i.e.,* before impact with the pedestrian, the driver must receive this information and respond appropriately by confirming whether someone is or is not behind the vehicle before proceeding. As noted above, these factors are denoted as f_A, f_S, and f_{DR}, respectively, in this analysis. Table 12 below shows these factors and their product, the final system effectiveness.

TABLE 12—FINAL SYSTEM EFFECTIVENESS

System	F_A (%)	F_S (%)	F_{DR} (%)	Final effectiveness (%) $F_A \times F_S \times F_{DR}$ = FE
180° Camera	90	100	55	49
130° Camera	76	100	5	42
Ultrasonic	49	70	7	2.5
Radar	54	70	7	2.7
Mirrors	*33	100	**0	0

* F_A for mirrors is taken from separate source due to lack of inclusion in the SCI case review that generated F_A for cameras and sensors.
** F_{DR} for mirrors is taken from a small sample size of 20 tests. It is 0% because throughout testing, drivers did not take advantage of either cross-view or lookdown mirrors to avoid the obstacle in the test.

ii. Costs

The most expensive technology option that the agency has evaluated is the rearview camera. When installed in a vehicle without any existing adequate display screen, rearview camera systems are estimated to cost consumers between $159 and $203 per vehicle. For a vehicle that already has an adequate display, such as one found in navigation units, their incremental cost is estimated at $58. The total incremental cost to equip a 16.6 million vehicle fleet with camera systems is estimated to be $1.9 to $2.7 billion.

Rear object sensor systems are estimated to cost between $52 and $92 per vehicle. The total incremental cost to equip a 16.6 million vehicle fleet with sensor systems is estimated to be $0.3 to $1.2 billion.

Several different types of mirrors were investigated. Interior look-down mirrors could be mounted on vans and SUVs, but not cars, and are estimated to cost $40 per vehicle. The total incremental cost to equip a 16.6 million vehicle fleet with lookdown mirrors is estimated to be $0.6 billion.

We also estimated the net property damage effects to consumers from using a camera or sensor system to avoid backing into fixed objects, along with the additional cost when a vehicle is struck in the rear and the camera or sensor is destroyed.

TABLE 13—COSTS (2007 ECONOMICS)

Costs Per Vehicle	$51.49 to $202.94.
Total Fleet	$723M to $2.4B.

iii. Benefits

As noted above, the agency has spent considerable effort trying to determine the final effectiveness of these systems in reducing crashes, injuries and fatalities. We have researched the capabilities of the systems, the crash circumstances, and the percent of drivers that would observe and react in time to avoid a collision with a pedestrian or pedalcyclist. The estimated injury and fatality benefits of the various systems, based on NHTSA research to date, are shown below.

TABLE 14—QUANTIFIABLE BENEFITS

	180° Camera view	130° Camera view	Ultrasonic	Radar	Look-down mirror
Fatalities Reduced	112	95	3	3	0
Injuries Reduced	8,374	7,072	233	257	0

iv. Net Benefits

In addition to the one-time installation costs, and the benefits that occur over the life of the vehicle, there would also be maintenance costs as well as repair costs due to rear-end collisions and "property damage only crashes" (which, like the benefits, occur over time). Below Table 15 contains lifetime monetized benefits and lifetime costs, and their difference, the net benefit. In this case, the quantifiable costs outweigh the quantifiable benefits and therefore the final number is a cost. (Note that this analysis does not include nonquantifiable benefits, a point to which we will shortly return.) The primary estimate is based on a 130 degree camera system with an in-mirror display. The low estimate is based on an ultrasonic system. The high estimate is based on a 180 degree camera system with an in-mirror display.

TABLE 15—SUMMARY OF BENEFITS AND COSTS PASSENGER CARS AND LIGHT TRUCKS (MILLIONS 2007$) MY 2016 AND THEREAFTER

	Primary estimate	Low estimate	High estimate	Discount rate (%)
Benefits:				
Lifetime Monetized	$618.6	$37.1	$732.6	7
Lifetime Monetized	777.6	46.7	920.8	3
Costs:				
Lifetime Monetized	1,933.3	22.6	2,362.4	7
Lifetime Monetized	1,861.3	730.4	2,296.9	3
Net Benefits:				
Lifetime Monetized	−1,314.7	−685.5	−1,629.8	7
Lifetime Monetized	−1,083.7	−683.7	−1,376.1	3

v. Cost Effectiveness

While we examine several application scenarios (all passenger cars and all light trucks, only light trucks, and some combinations) and discount rates of 3 and 7 percent, the net cost per equivalent life saved for camera systems ranged from $11.8 to $19.7 million. For sensors, it ranged from $95.5 to $192.3 million per life saved. According to our present model, none of the systems are cost effective based on our comprehensive cost estimate of the value of a statistical life of $6.1 million.

TABLE 16—COST PER EQUIVALENT LIFE SAVED

	Cost per equivalent life saved
Sensors (Ultrasonic and Radar).	$95.5 to $192.3 mill.

TABLE 16—COST PER EQUIVALENT LIFE SAVED—Continued

Camera Systems	$11.8 to $19.7 mill.

The range presented is from a 3% to 7% discount rate.

The agency is proposing requirements that would likely be currently met by using cameras for both passenger cars and light trucks. We also seek comment on an alternative aimed at reducing net costs that could be met by requiring having cameras for light trucks and either cameras or ultrasonic sensors for passenger cars. We also request comment on the extent to which the effectiveness of sensors and the response of drivers to sensor warnings could be improved.

E. Comparison of Regulatory Alternatives

In order to explore fully other possible rulemaking options, the agency examined a variety of combinations of technology, specifically, ones in which light trucks were equipped with a rearview video system and passenger cars were either given no extra equipment, a rearview video system (using a camera) or another technology such as a sensor system. The results of examining such combinations are available below. Note the camera/radar and camera/ultrasonic options have decreased costs compared to mandating cameras for both vehicle types, but have a higher cost per life saved. It would not fulfill the requirements of the statute to require cameras for light trucks and nothing for passenger cars; those numbers are provided only as a point of comparison. Also, the camera/radar option has a higher net costs associated with it than simply mandating cameras for both, and will most likely not be viable on those grounds. Comments on these alternatives and suggestions of others are welcome.

TABLE 17—REAR VISIBILITY PROPOSAL AND ALTERNATIVES DISCOUNTED AT 3%

[Millions of 2007 $]

[In decreasing order of installation costs and monetized safety benefits]

Proposal and alternatives	Per vehicle costs and benefits				Net cost per equivalent life saved
	Installation costs [91]	Monetized safety Benefits	Property damage costs	Net costs	
LT Camera, PC Camera	$1,919 to $2,275	$778	$−414	$727 to $1,084	$11.8 to $14.6.
LT Camera, PC Radar	$1,512 to $1,710	439	−149	$924 to $1,122 [92]	$18.9 to $21.7.[93]
LT Camera, PC Ultrasonic [94]	$1,215 to $1,413	437	−165	$613 to $811	$14.7 to $17.4.
LT Camera, PC Nothing [95]	$841 to $1,039	415	−189	$237 to $435	$9.6 to $12.5.

The most effective technology option that the agency has evaluated is the rearview video system which, as already noted, consists of a video camera and a visual display. It is also the most expensive technology. When installed in a vehicle that does not already have any visual display screen, rearview video systems are estimated to cost consumers between $159 and $203 per vehicle. The upper end of the cost range is based on systems that have in-mirror (as opposed to in-dash or console) displays and a 180 degree (as opposed to 130 degree) lens. For a vehicle that already has a suitable visual display, such as one found in navigation units, the incremental cost of a rearview video system is estimated at $58–$88, depending on the angular width of the lens. The total incremental cost to equip a 16.6 million vehicle fleet with rearview video systems is estimated to be $1.9 to $2.7 billion.

Commenters on the ANPRM noted that rearview video systems are a relatively new technology and stated that considerable reductions in costs will occur as these technologies proliferate in the fleet. NHTSA agrees that technological innovation will occur over the next couple of years and that the costs are likely to be substantially less when actually installed in future model years. However, we have not identified a way to estimate this lower cost.

Given the effectiveness estimates that we have generated and assuming that all vehicles will be equipped with the most likely countermeasure technology, namely a rearview video system and associated display, we believe the fatalities that are occurring in backing crashes could be reduced by 95 to 112 per year. Similarly, injuries would be reduced by 7,072 to 8,374 per year. We estimate that the cost per equivalent lives for rearview video systems would range from $11.8 million based on a 3% discount rate and on the low end of the per vehicle cost range to $19.7 million based on a 7% discount rate and the high end of the per vehicle cost range.

We note that while this cost per equivalent lives saved, even at the low end, is nearly double the Departmental value of a statistical life of $6.1 million,[96] the proposed solution is the most comprehensive and effective, currently available solution to mitigate backover crashes, fatalities, and injuries. As we discussed above, the quantitative analysis does not offer a complete accounting. We have noted that well over 40 percent of the victims of backover crashes are very young children (under the age of five), with nearly their entire life ahead of them. Executive Order 12866 also refers explicitly to considerations of equity. ("(I)n choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including * * * equity), and there are strong reasons, grounded in those considerations, to prevent the deaths at issue here. In addition, this regulation will, in many cases, reduce a qualitatively distinct risk, which is that of directly causing the death or injury of one's own child.[97] Drivers will also benefit from increased rear visibility in a variety of ways, including increased ease and convenience with respect to parking.

While these benefits cannot be monetized, they could be significant. A breakeven analysis suggests that if the nonquantified benefits amount $65 to $79 per vehicle, the benefits would justify the costs. Taking all of the foregoing points alongside the quantifiable figures and the safety issue at hand, the agency tentatively concludes that the benefits do justify the costs. More specifically, we emphasize the following data and considerations:

- 100 of the 228 (44%) annual victims of backover crashes are under 5 years of age with nearly their entire lives ahead of them; 80 of the 100 children are under 3 years of age.[98]
- While this rulemaking would result in great cost if made final as proposed, it would also have substantial benefits, reducing the annual fatalities in backover crashes by 95 to 112 fatalities, and annual injuries by 7,072 to 8,374 injuries.
- In addition to those benefits, there are other benefits that are hard to quantify, but are nonetheless real and significant. One such benefit is that of not being the direct cause of the death or injury of a person and particularly a small child at one's place of residence. In some of these cases, parents are responsible for the deaths of their own children; avoiding that horrible outcome is a significant benefit. Another hard-to-

[91] The range of camera costs assumes 130 degree camera with the display in the dash (lower cost) to the display in the mirror (higher cost).

[92] The net costs are substantially more than those for any of the other options.

[93] The cost per equivalent life saved is substantially more for this option than that for any of the other options.

[94] Under this alternative, passenger cars could be equipped with either sensor systems or camera systems. For a fuller description of this alternative, see the discussion above at the very end of section I, Executive Summary.

[95] The agency tentatively concludes that not requiring any improved performance by passenger cars would be inconsistent with the mandate in the Cameron Gulbransen Kids Transportation Safety Act of 2007.

[96] The $6.1 million represents the 2007 Departmental value of $5.8 million for a statistical life (VSL) adjusted for economic cost factors that are not inherently a part of the $5.8 million. These include, medical care, emergency services, legal costs, insurance administrative costs, workplace costs, property damage and the taxed portion of lost market productivity (the untaxed portion is assumed to be inherently included in the VSL).

[97] On the relevance of this fact, see J.K. Hammitt and K. Haninger, "Valuing Fatal Risks to Children and Adults: Effects of Disease, Latency, and Risk Aversion," *Journal of Risk and Uncertainty* 40(1): 57–83, 2010.

[98] Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks * * * Section 1. Policy. 1–101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from * * * safety risks. These risks arise because: children's neurological, immunological, digestive, and other bodily systems are still developing; * * * and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. * * *

quantify benefit is the increased ease and convenience of driving, and especially parking, that extend beyond the prevention of crashes. While these benefits cannot be monetized at this time, they could be considerable.

• There is evidence that many people value the lives of children more than the lives of adults.[99] [100] In any event, there is special social solicitude for protection of children. In the area of motor vehicle safety, this special solicitude for the welfare of children has been evident in the area of motor vehicle safety in the mandates [101] by Congress over the years for issuing standards primarily benefiting children. This solicitude regarding children is based, to a significant extent, on their greater vulnerability to injury and their inability to protect themselves.

• Given the very young age of most of the children fatally-injured in backover crashes, attempting to provide them with training relevant to the particular circumstances of those crashes or with an audible warning would not enable them to identify or take steps to protect themselves, given their impulsiveness, their lack of understanding of the abstract concept of risk/danger/safety, and their lack of situational awareness, judgment and physical ability (*e.g.,* dexterity) to take timely and effective self-protective action.

• Given the impossibility of reducing backover crashes through changing the behavior of very young children and given Congress' mandate, it is reasonable and necessary to rely on vehicle technology to address backover crashes and to that end the agency examined a variety of technologies to assess their value in improving driver awareness and performance: mirrors, sensors, cameras, and other technologies.

• Based on its extensive testing to determine how much area behind a vehicle a driver must be able to see in order to avoid backover crashes and on the relative effectiveness of the various technologies in improving driver awareness and performance, the agency has tentatively concluded that a camera-based system is the only effective type of technology currently available.

• Requiring additional rearview mirrors or changes to existing review mirrors cannot provide an effective solution to the problem of backover crashes. Changes to outside rearview mirrors mounted near the driver offer only very limited opportunities for any improvement in the existing rearward view to the sides of vehicles and no opportunity for providing any view of the area directly behind vehicles. While rearview mirrors mounted at or near the rear of vehicles could provide a view to the rear of vehicles, the coverage area would be relatively small. Further, the image, as viewed by the driver indirectly via outside rearview mirrors mounted near the driver, would be fairly small and distorted, making the viewed objects difficult to discern. Finally, rear-mounted rearview mirrors might not be reasonable, practicable and appropriate for many types of light vehicles.

• The agency's testing indicated that currently available sensors, which are designed primarily to avoid collisions with objects (like posts and other vehicles) that can cause property damage, had two shortcomings. First, they often failed to detect a human, particularly a small moving child, in tests in which the vehicle was not actually moving. Second, in tests in which the vehicle was moving, and in which the sensors did detect a manikin representing a child, the resulting warning did not induce drivers to pause more than briefly in backing. Being unable to confirm visually whether there was something or someone behind them, the drivers in these tests resumed their backing.

• In contrast, in the agency's tests of vehicles equipped with video camera-based systems, drivers not only saw a child-sized obstacle, but also stopped and remained stopped, thereby avoiding striking the obstacle in a substantial percentage of the tests.

• Consequently, the agency has tentatively concluded that requirements must have the effect of ensuring that the driver is provided with some type of image of the area directly behind his or her vehicle. However, the agency is not proposing to require that video camera-based systems be installed to provide that image.

• Instead, the agency is proposing a performance-based requirement for any system that can provide the driver with the requisite image. The proposal does not specify a single location within the vehicle as the location in which the image must be provided. Thus, the image can be provided on a display in the dash or interior rearview mirror.

• In time, types of technology other than a video camera-based system may be able to provide a sufficiently clear visual image of the area behind the vehicle at lower cost than a video camera-based system can.

• In proposing a requirement that drivers must be provided with a visual image of the area behind their vehicles, the agency recognizes that among currently available candidate technologies, video cameras are the most expensive and mirrors are the least. Sensors fall in between.

• The agency's estimates of current costs for video camera-based systems may be too high as the estimates are based on data that are a few years old.

• The agency has a contract in place for the conducting of up-to-date tear down cost studies of both camera and sensor technologies. These studies could produce somewhat lower cost estimates.

• To the extent that the agency may have underestimated the extent to which technological innovation and other factors will lead to future reductions in the costs of video camera-based systems, the future costs may be even lower than currently expected.

• In view of statutory requirements, the agency is limited in its ability to reduce the cost of this rulemaking through adjusting either the requirements or application of the proposed rule or the schedule for its implementation.

• Congress has mandated the issuance of a final rule instead of allowing the agency to retain discretion to decide whether to issue a final rule based on its consideration of all the relevant factors and information.

• While Congress has not mandated a system that provides the driver with an image of the area behind his or her vehicle, less expensive countermeasures, *i.e.,* mirrors and sensors, have thus far shown very limited effectiveness and thus would not satisfy Congress' mandate for improving safety.

• Video camera-based systems are by far the most comprehensive and cost-effective currently available solution for reducing backover crashes, fatalities and

[99] J.K. Hammitt and K. Haninger, "Valuing Fatal Risks to Children and Adults: Effects of Disease, Latency, and Risk Aversion," *Journal of Risk and Uncertainty* 40(1): 57–83, 2010. This stated preference study finds that the willingness to pay to prevent fatality risks to one's child is uniformly larger than that to reduce risk to another adult or to oneself. Estimated values per statistical life are $6–10 million for adults and $12–15 million for children. We emphasize that the literature is in a state of development.

[100] Other people argue for valuing all lives equally, regardless of age, and note there is also a special solicitude for another vulnerable population, the elderly. Some of the elderly have difficulty quickly moving out of dangerous situations. Special solicitude for the elderly is very germane to this rulemaking given that persons 70 years of age or older account for another large segment of fatalities, *i.e.,* 74 (33 percent) of the 228 annual fatalities.

[101] Recent examples include Anton's Law, Public Law 107–318, Dec. 4, 2002, and the K.T. Safety Act. That solicitude is also evident in the requirement in Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, *Public Law 105–277* (*5 U.S.C. 601* note) for assessment of impacts of Federal regulations and policies on families.

injuries. As the most cost-effective alternative, a requirement for a system that provides an image of the area behind the vehicle would be consistent with the policy preference underlying the Unfunded Mandates Reform Act.

• The agency is limited by law as to the amount of leadtime it can provide for this final rule. Were the agency able to provide even more leadtime than permitted, that additional time might be sufficient to enable suppliers to develop cheaper cameras. Given the limits within which the agency must operate, which require the agency to provide not more than four years of leadtime, the agency has proposed a back-loaded phase-in schedule, *i.e.,* one focused on the latter part of the phase-in period, to maximize leadtime.

As stated above, NHTSA is also considering whether there are any circumstances under which it would be appropriate and permissible under the K.T. Safety Act to limit the application of the proposed requirements to LTVs only, *i.e.,* to exclude passenger cars. The agency's tentative conclusion is that there are not. If the improved rear visibility requirements [102] were applied only to LTVs, we estimate that the fatalities occurring in backover crashes would still be reduced by 70 to 83 per year. Similarly, injuries would still be reduced by 3,284 to 3,888 per year. We estimate that the cost per equivalent lives for rearview video systems would range from $9.6 million based on a 3% discount rate to $17.0 million based on a 7% discount rate. Table 18 contrasts the proposal and the alternative below using a 3% discount rate and 7% discount rate. The table includes ranges of costs and benefits based on a video camera having a 130- to 180-degree horizontal viewing angle.

TABLE 18—SUMMARY OF ESTIMATED COSTS AND BENEFITS—3% AND 7% DISCOUNT RATE SCENARIOS [103]

Applicability	Total cost	Fatalities prevented	Injuries prevented	Net cost per equivalent life saved
Passenger Cars, MPVs, Trucks, Buses with a GVWR of 10,000 pounds or less.	$1.9–2.7 billion	95–112	7,072–8,374	$11.8–19.7 million.
MPVs, Trucks, Buses with a GVWR of 10,000 pounds or less	0.8–1.2 billion	70–83	3,284–3,888	9.6–17.0 million.

Table 19 summarizes the impacts based on a primary estimate which assumes a 130 degree camera with the display in the rearview mirror, a low estimate that assumes ultrasonic sensors and auditory warnings, and a high estimate that assumes a 180 degree camera with the display in the rearview mirror. Property damage estimates are included in the costs, and net property damage costs are significantly different (even in sign) between ultrasonic/radar and any camera system.

TABLE 19—SUMMARY OF BENEFITS AND COSTS PASSENGER CARS AND LIGHT TRUCKS (MILLIONS 2007$) MY 2015 AND THEREAFTER

	Primary estimate	Low estimate	High estimate	Discount rate (%)
Benefits:				
Lifetime Monetized	$618.6	$37.1	$732.6	7
Lifetime Monetized	777.6	46.7	920.8	3
Costs:				
Lifetime Monetized	1,933.3	722.6	2,362.4	7
Lifetime Monetized	1,861.3	730.4	2,296.9	3
Net Benefits:				
Lifetime Monetized	−1,314.7	−685.5	−1,629.8	7
Lifetime Monetized	−1,083.7	−683.7	−1,376.1	3

VIII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dms.dot.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

[102] For illustration purposes, figures indicated represent rear visibility improvement provided using a rearview video system with 130-degree video camera.

[103] For illustration purposes, figures indicated represent rear visibility improvement provided using a rearview video system with 130-degree video camera.

stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

IX. Rulemaking Analyses

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal 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 the Executive Order.

We have considered the potential impact of this proposal under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is economically significant because it is likely to have an annual effect on the economy of $100 million or more and was reviewed by the Office of Management and Budget under E.O. 12866. The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. The preliminary regulatory impact analysis (PRIA) fully discusses the estimated costs and benefits of this rulemaking action. The costs and benefits are also summarized in section VII of this preamble, *supra.*

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Small organizations and small governmental units would not be significantly affected since the potential cost impacts associated with this action would not significantly affect the price of new motor vehicles. We believe that the rulemaking would not have a significant economic impact on the small vehicle manufacturers because the systems are not technically hard to develop or install and the cost of the systems ($160 to $200) is a small proportion (less than half of one percent) of the overall vehicle cost for most of these specialty cars.

The proposal would directly affect motor vehicle manufacturers and final-stage manufacturers. The majority of motor vehicle manufacturers would not qualify as a small business. There are six manufacturers of passenger cars that are small businesses.[104] These manufacturers, along with manufacturers that do not qualify as a small business, are already required to comply with the current mirror requirements of FMVSS No. 111. Similarly, there are several manufacturers of low-speed vehicles that are small businesses. Currently, FMVSS No. 111 does not apply to low-speed vehicles, although they are required to have basic mirrors pursuant to FMVSS No. 500, Low-speed vehicles (including the option of having either an exterior driver-side mirror or an interior rearview mirror). The addition of a rearview video system can be accomplished via the purchase of an exterior video camera, integration of a console video screen or the addition of an interior rearview mirror-mounted screen, and wiring to connect the two as well as to connect them to the vehicle.

Because the K.T. Safety Act encompasses all motor vehicles with a GVWR or 10,000 pounds or less (except motorcycles and trailers) in its mandate

[104] Fisker, Mosler, Panoz, Saleen, Standard Taxi, Tesla.

to reduce backovers, all of these small manufacturers could be affected by the proposed requirements. However, the economic impact upon these entities would not be significant for the following reasons.

(1) Potential cost increases are small compared to the price of the vehicles being manufactured and can be passed on to the consumer as nearly all vehicles are subject to the proposed requirements.

(2) The proposal provides four years lead-time, the limit permitted by the K.T. Safety Act, and would allow small volume manufacturers the option of waiting until the end of the phase-in (until September 1, 2014) to meet the rear visibility requirements.

In this NPRM, the agency has also considered several alternatives that could help to reduce the burden on small businesses. The agency considered an alternative under which passenger cars would be required to be equipped with either a visibility system or with a system that includes an ultrasonic sensor that monitors the specified area behind the vehicle and an audible warning, and other vehicles rated at 10,000 pounds or less, gross vehicle weight, would be required to be equipped with a visibility system. This alternative would have substantially lower, but still significant, safety benefits, substantially lower installation costs and higher cost per equivalent life saved. The agency also considered reducing the types of vehicles subject to rear visibility performance by excluding low-speed vehicles explicitly or, in the alternative, limiting the applicability of the rule to MPVs and trucks with a GVWR of 10,000 pounds or less.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposed rule would 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."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision set forth above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposal could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposal and finds that this proposal, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this proposal preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposal. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard proposed here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

We solicit the comments of the States and other interested parties on this assessment of issues relevant to E.O. 13132.

D. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, *Executive Order 12988* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposal is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks," (62 FR 19885; April 23, 1997) applies to any proposed or final rule that: (1) Is determined to be "economically significant," as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the agency must evaluate the

environmental health or safety effects of the rule on children, and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This proposed rule is subject to Executive Order 13045 because it is economically significant and available data demonstrate that the safety risk addressed by this proposal disproportionately involves children, especially very young ones. The issues that must be analyzed under this Executive Order are discussed extensively in the preamble above and in the PRIA.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. The agency is not aware of any applicable voluntary consensus standards that apply to rearview video systems.

While the agency examined two voluntary industry standards, International Standards Organization (ISO) 17386 and ISO 15008, as potentially relevant, the agency does not believe that either is relevant and thus has tentatively decided not to utilize them. While both standards have aspects that relate to the issue of rear visibility performance, neither addresses the specific type of rearview video system being proposed in this notice. ISO 17386, Maneuvering Aids for Low Speed Operations (MALSO), relates to the performance aspects of sensor-based rear object detection systems. While such systems were considered, NHTSA has not proposed them in this document, due to issues related to driver performance. ISO 15008 relates to the ergonomic aspects of in-vehicle screens.[105] However, it specifically does not apply to the types of screens at issue in this proposal, which would be required to show closed-circuit video images. Furthermore, in response to comments, NHTSA endeavored to propose a requirement that is as performance based and technologically-neutral as possible, to allow maximum design freedom while still meeting the performance requirements needed for safety.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). NHTSA must comply with that requirement in connection with this rulemaking as the proposed rule would result in expenditures by the private sector of over $100 million annually.

As noted previously, the agency has prepared a detailed economic assessment in the PRIA. In that assessment, the agency analyzes the benefit and costs of a rear visibility countermeasure performance requirement for passenger cars, multipurpose passenger vehicles, trucks, buses, and low-speed vehicles with a GVWR of 10,000 pounds or less. NHTSA's preliminary analysis indicates that the proposal could result in private expenditures of up to $2.7 billion annually.

The PRIA also analyzes the expected benefits and costs of a wide variety of alternative countermeasure options, including mirrors, cameras, and sensors, as specified in the K.T. Safety Act. The agency subjected several types of each class of countermeasure to thorough effectiveness testing and cost-benefit analysis. Additionally, the agency previously published a detailed ANPRM and separate PRIA, in order to explain its thoughts on the technological solutions available and solicit information on costs, benefits, and applications on all possible solutions to the safety concern. NHTSA received a large variety of comments on the ANPRM and PRIA and used that information in formulating the instant proposal.

Although the application of the rear visibility requirement to MPVs, trucks, and passenger cars is the highest cost option, the agency tentatively concludes that the costs are justified. As explained in detail in the PRIA for this NPRM, after carefully exploring all possible alternatives, NHTSA tentatively concludes that rearview video systems offer not only the highest overall benefits, but also the most efficient cost per life saved ratio.

Above, NHTSA solicits comment on other alternatives, including one alternative limiting the application of rearview video systems to only MPVs and trucks with a GVWR of 10,000 pounds or less and another alternative requiring those systems for MPVs and trucks and either sensors or those systems for cars. The PRIA summarizes the costs, benefits, and cost per life saved for the proposal and these alternatives. We note that, at this time, while one of the alternatives has overall lower costs and a slightly more efficient cost per life saved ratio than NHTSA's proposal, the agency tentatively concludes that the increased benefits of the proposal, especially in terms of fatalities and injuries to children, are worth the additional costs above those in the more limited alternative scenario.

Since the agency has estimated that the proposed rule could result in expenditures of over $1 billion annually, NHTSA has performed a probabilistic uncertainty analysis to examine the degree of uncertainty in its cost and benefit estimates and included that analysis in the PRIA.

H. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

[105] ISO 15008–2009 specifies minimum requirements for the image quality and legibility of displays containing dynamic (changeable) visual information presented to the driver of a road vehicle by on-board transport information and control systems (TICS) used while the vehicle is in motion. These requirements are intended to be independent of display technologies, while reference to test methods and measurements for assessing compliance with them have been included where necessary.

ISO 15008–2009 is applicable to mainly perceptual, and some basic cognitive, components of the visual information including character legibility and color recognition. It is not applicable to other factors affecting performance and comfort such as coding, format and dialogue characteristics, or to display using:

Characters presented as part of a symbol or pictorial information;

Superimposed information on the external field (*e.g.,* high-up displays);

Pictorial images (*e.g.,* rear view camera);

Maps and topographic representations (*e.g.,* those for setting navigation systems); or

Quasi-static information.

http://www.iso.org/iso/iso_catalogue/catalogue_ics/catalogue_detail_ics.htm?csnumber=50805

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal would include a collection of information, *i.e.,* the proposed phase-in reporting requirements. If approved, the requirements would require manufacturers of passenger cars and of trucks, buses, MPVs and low-speed vehicles with a GVWR of 4,536 kg (10,000 lb) or less, to annually submit a report for each of two years concerning the number of such vehicles that meet the rear visibility system requirements.

Accordingly, the Department of Transportation will be submitting the following information collection request to OMB for review and clearance under the PRA.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Phase-In Production Reporting Requirements for Rear Visibility Systems.

Type of Request: New request.

OMB Clearance Number: None assigned.

Form Number: This collection of information will not use any standard forms.

Affected Public: The respondents are manufacturers of passenger cars, multipurpose passenger vehicles, trucks, buses, and low-speed vehicles having a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less. The agency estimates that there are about 21 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual burden is 42 hours (2 hours per manufacturer per year). Two reports per manufacturer would be collected.

Estimated Costs: NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $2,100. No additional resources would be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own uses.

Summary of the Collection of Information: This collection would require manufacturers of passenger cars, multipurpose passenger vehicles, trucks, buses, and low-speed vehicles having a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less to provide motor vehicle production data for the following two years: September 1, 2012 through August 31, 2013; and September 1, 2013 through August 31, 2014.

Description of the Need for the Information and the Proposed Use of the Information: The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, during the phase-in of new requirements for rear visibility systems.

NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. Organizations and individuals that wish to submit comments on the information collection requirements should direct them to NHTSA's docket for this NPRM. These comments must be received on or before February 7, 2011.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

IX. Proposed Regulatory Text

List of Subjects in 49 CFR Parts 571 and 585

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.111 is amended by revising the heading, S1 and S3, adding in alphabetical order the following definitions to S4, and adding S5.5 through S5.5.3.7, S6.2 through S6.2.3.7, S14 through S14.3.3, and Figures 5 and 6 to read as follows:

§ 571.111 Standard No. 111; Rear visibility.

S1. *Scope.* This standard specifies requirements for rearview devices and systems.

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, school buses, motorcycles and low-speed vehicles.

S4. *Definitions.*

* * * * *

Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

Rearview image means a visual image of the area directly behind a vehicle that is provided in a single location to the vehicle operator and by means of indirect vision.

Small manufacturer means an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States.

* * * * *

S5.5 *Rear visibility.*

(a) For passenger cars manufactured on or after September 1, 2012, but not later than August 31, 2014, a percentage of each manufacturer's production, as specified in S5.5.3, shall display a rearview image meeting the requirements of S5.5.1 through S5.5.2.

(b) Each passenger car manufactured on or after September 1, 2014, shall display a rearview image meeting the requirements of S5.5.1 through S5.5.2.

S5.5.1 *Rearview image performance.*

S5.5.1.1 *Field of view.* When tested in accordance with the procedures in S14.1 through S14.2.3, the rearview image shall display, in a location visible to a driver properly restrained by seat belts:

(a) A minimum of a 150-mm wide portion of each test object located at positions F and G in Figure 5; and

(b) The full width and height of each test object located at positions A through E in Figure 5.

S5.5.1.2 *Size.* When the rearview image is measured in accordance with the procedures in S14.1 through S14.2.3, the calculated visual angle subtended by the horizontal width of:

(a) The three test objects located at positions A, B, and C in Figure 5 shall average not less than 5 minutes of arc; and

(b) The angular size of each individual test object (A, B, and C) shall not be less than 3 minutes of arc.

S5.5.1.3 *Response time.* The rearview image meeting the requirements of S5.5.1 through 5.5.1.6 shall be displayed within 2.0 seconds of the time at which the vehicle transmission is shifted into reverse gear; and

S5.5.1.4 *Linger time.* The rearview image shall not be displayed for more than 10.0 seconds after the vehicle transmission has been shifted out of reverse gear.

S5.5.1.5 *Deactivation.* The rearview image shall not be extinguishable by any driver-controlled means.

S5.5.1.6 *Display luminance.* When tested in accordance with S14.2, the luminance of an interior visual display used to present the rearview image shall not be less than 500 cd/m^2.

S5.5.2 *Durability performance.* After the vehicle is subjected to the test procedures in S14.2.1 through S14.2.3, the vehicle shall meet the requirements of S5.5.1.1 and S5.5.1.2.

S5.5.3 *Phase-in schedule.*

S5.5.3.1 *Vehicles manufactured on or after September 1, 2012 and before September 1, 2014.* At any time during the production years ending August 31, 2012 and August 31, 2013, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with this standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

S5.5.3.2 *Vehicles manufactured on or after September 1, 2012 and before September 1, 2013.* Except as provided in S5.5.3.4, for passenger cars manufactured by a manufacturer on or after September 1, 2012, and before September 1, 2013, the number of passenger cars complying with S5.5 through S5.5.2 shall be not less than 10 percent of the manufacturer's—

(a) Production of passenger cars during that period; or

(b) Average annual production of passenger cars manufactured in the three previous production years.

S5.5.3.3 *Vehicles manufactured on or after September 1, 2013 and before September 1, 2014.* Except as provided in S5.5.3.4, for passenger cars manufactured by a manufacturer on or after September 1, 2013, and before September 1, 2014, the number of passenger cars complying with S5.5 through S5.5.2 shall be not less than 40 percent of the manufacturer's—

(a) Production of passenger cars during that period; or

(b) Average annual production of passenger cars manufactured in the three previous production years.

S5.5.3.4 *Exclusions from phase-in.* The requirements in S5.5.3.2 and S5.5.3.3 do not apply to—

(a) Vehicles that are manufactured by small manufacturers or by limited line manufacturers.

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2014, after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2014.

S5.5.3.5 *Vehicles produced by more than one manufacturer.* For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S5.5.3.1 through S5.5.3.3, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S5.5.3.6—

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S5.5.3.6 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S5.5.3.5.

S5.5.3.7 *Calculation of complying vehicles.*

(a) For the purposes of calculating the vehicles complying with S5.5.3.2, a manufacturer may count a vehicle if it is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2013.

(b) For purposes of complying with S5.5.3.3, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2014 and,

(2) Is not counted toward compliance with S5.5.3.2.

(c) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer, each vehicle that is excluded from having to meet the applicable requirement is not counted.

* * * * *

S6.2 *Rear visibility.*

(a) For multipurpose passenger vehicles, low-speed vehicles, trucks, and buses with a GVWR of 4.536 kg or less manufactured on or after September 1, 2012, but not later than August 31, 2014, a percentage of each manufacturer's production, as specified in S6.2.3, shall display a rearview image meeting the requirements of S6.2.1 through S6.2.2.

(b) Each multipurpose passenger vehicle, low-speed vehicle, truck, and bus with a GVWR of 4.536 kg or less manufactured on or after September 1, 2014, shall display a rearview image meeting the requirements of S6.2.1 through S6.2.2.

S6.2.1 *Rearview image performance.*

S6.2.1.1 *Field of view.* When tested in accordance with the procedures in S14.1 through S14.2.3, the rearview image shall display, in a location visible to a driver properly restrained by seat belts:

(a) A minimum of a 150-mm wide portion of each test object located at positions F and G in Figure 5; and

(b) The full width and height of each test object located at positions A through E in Figure 5.

S6.2.1.2 *Size.* When the rearview image is measured in accordance with the procedures in S14.1 through S14.2.3, the calculated visual angle—subtended by the horizontal width of

(a) The three test objects located at positions A, B, and C in Figure 5 shall average not less than 5 minutes of arc; and

(b) The angular size of each individual test object (A, B, and C) shall not be less than 3 minutes of arc.

S6.2.1.3 *Response time.* The rearview image meeting the requirements of S6.2.1 through 6.2.1.6 shall be displayed within 2.0 seconds of the time at which the vehicle transmission is shifted into reverse gear; and

S6.2.1.4 *Linger time.* The rearview image shall not be displayed for more than 10.0 seconds after the vehicle transmission has been shifted out of reverse gear.

S6.2.1.5 *Deactivation.* The rearview image shall not be extinguishable by any driver-controlled means.

S6.2.1.6 *Display luminance.* When tested in accordance with S14.2, the luminance of an interior visual display used to present the rearview image shall not be less than 500 cd/m^2.

S6.2.2 *Durability performance.* After the vehicle is subjected to the test procedures in S14.2.1 through S14.2.3, the vehicle shall meet the requirements of S6.2.1.1 and S6.2.1.2.

S6.2.3 *Phase-in schedule.*

S6.2.3.1 *Vehicles manufactured on or after September 1, 2012 and before September 1, 2014.* At any time during the production years ending August 31, 2012 and August 31, 2013, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with this standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

S6.2.3.2 *Vehicles manufactured on or after September 1, 2012 and before September 1, 2013.* Except as provided in S6.2.3.4, for multipurpose passenger vehicles, trucks, buses, and low-speed vehicles with a GVWR of 4.536 kg or less, manufactured by a manufacturer on or after September 1, 2012, and before September 1, 2013, the number of such vehicles complying with S6.2 through S6.2.2 shall be not less than 33 percent of the manufacturer's—

(a) Production of such vehicles during that period; or

(b) Average annual production of such vehicles manufactured in the three previous production years.

S6.2.3.3 *Vehicles manufactured on or after September 1, 2013 and before September 1, 2014.* Except as provided in S6.2.3.4, for multipurpose passenger vehicles, trucks, buses, and low-speed vehicles with a GVWR of 4.536 kg or less, manufactured by a manufacturer on or after September 1, 2013, and before September 1, 2014, the number of such vehicles complying with S6.2 through S6.2.2 shall be not less than 67 percent of the manufacturer's—

(a) production of such vehicles during that period; or

(b) average annual production of such vehicles manufactured in the three previous production years.

S6.2.3.4 *Exclusions from phase-in.* The requirements in S6.2.3.2 and S6.2.3.3 do not apply to—

(a) Vehicles that are manufactured by small manufacturers or by limited line manufacturers.

(b) Vehicles that are altered (within the meaning of 49 CFR 567.7) before September 1, 2014, after having been previously certified in accordance with part 567 of this chapter, and vehicles manufactured in two or more stages before September 1, 2014.

S6.2.3.5 *Vehicles produced by more than one manufacturer.* For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S6.2.3.1 through S6.2.3.3, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S6.2.3.6—

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S6.2.3.6 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S6.2.3.5.

S6.2.3.7 *Calculation of complying vehicles.*

(a) For the purposes of calculating the vehicles complying with S6.2.3.2, a manufacturer may count a vehicle if it is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2013.

(b) For purposes of complying with S6.2.3.3, a manufacturer may count a vehicle if it—

(1) Is manufactured on or after [date that is 30 days after publication of the final rule in the **Federal Register**] but before September 1, 2014 and,

(2) Is not counted toward compliance with S6.2.3.2.

(c) For the purposes of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer, each vehicle that is excluded from having to meet the applicable requirement is not counted.

* * * * *

S14 *Rear visibility test procedure.*

S14.1 *Test setup.*

S14.1.1 *Lighting.* The ambient illumination conditions in which testing is conducted consists of light that is evenly distributed from above and is at an intensity of 10,000 lux, as measured at the center of the exterior surface of vehicle's roof.

S14.1.2 *Vehicle conditions.*

S14.1.2.1 *Tires.* The vehicle's tires are set to the vehicle manufacturer's recommended cold inflation pressure.

S14.1.2.2 *Fuel tank loading.* The fuel tank is full.

S14.1.2.3 *Vehicle load.* The vehicle is loaded to simulate the weight of the driver and four passengers or the designated occupant capacity, if less, based on an average occupant weight of 68 kg. The weight of each occupant is represented by 45 kg resting on the seat pan and 23 kg resting on the vehicle floorboard.

S14.1.2.4 *Driver's seat positioning.*

S14.1.2.4.1 Adjust the driver's seat to the midpoint of the longitudinal adjustment range.

S14.1.2.4.2 Adjust the driver's seat to the lowest point of all vertical adjustment ranges present.

S14.1.2.4.3 Using the three dimensional SAE J826 (rev. Jul 95) manikin, adjust the driver's seat back angle at the vertical portion of the H-point machine's torso weight hanger to 25 degrees. If this adjustment setting is not available, adjust the seat-back angle to the positional detent setting closest to 25 degrees in the direction of the manufacturer's nominal design riding position.

S14.1.3 *Test object.* Each test object is a right circular cylinder that is 0.8 m high and 0.3 m in external diameter. There are seven test objects, A–G. Test objects A, B, C, D, and E are marked with a horizontal band encompassing the uppermost 150 mm of the side of the cylinder. Test objects F and G are marked on the side with a solid vertical stripe of 150 mm width extending from the top to the bottom of each cylinder. Both the horizontal band and vertical stripe shall be of a color that contrasts with both the rest of the cylinder and the test surface.

S14.1.4 *Test object locations and orientation.* Place cylinders at locations specified in S14.1.5(a) through(d) and illustrated in Figure 5. Measure the distances shown in Figure 5 from a cylinder to another cylinder or another object from the center (axis) of the cylinder as viewed from above. Each test object is oriented so that its axis is vertical.

(a) Place cylinders G and F so that their centers are in a transverse vertical plane that is 0.3 m to the rear of a transverse vertical plane tangent to the rearmost surface of the rear bumper. Place cylinders E and D so that their centers are in a transverse vertical plane

that is 0.9 m to the rear of a transverse vertical plane tangent to the rearmost surface of the rear bumper. Place cylinders A, B and C so that their centers are in a transverse vertical plane that is 6.1 m to the rear of a transverse vertical plane tangent to the rearmost surface of the rear bumper.

(b) Place cylinder B so that its center is in a longitudinal vertical plane passing through the vehicle's longitudinal centerline.

(c) Place cylinders C, E, and G so that their centers are in a longitudinal vertical plane located 1.5 m, measured laterally and horizontally, to the left of the vehicle longitudinal center line.

(d) Place cylinders A, D, and F so that their centers are in a longitudinal vertical plane located 1.5 m, measured laterally and horizontally, to the right of the vehicle longitudinal center line.

S14.1.5 *Test reference point.* To obtain the test reference point, locate the center of the forward-looking eye midpoint (M_f) of a 50th percentile male driver in the sagittal plane of the driver's body, 632 mm vertically above the H point and 96 mm aft of the H point (H), as illustrated in Figure 6. Next, locate the head/neck joint center (J) illustrated in Figure 6 so that it is located 100 mm rearward of M_f and 588 mm vertically above the H point. Draw an imaginary horizontal line between M_f and a point vertically above J, defined as J_2. Rotate the imaginary line about J_2 in the direction of the rearview image until the straight-line distance between M_f and the center of the visual display reaches the shortest possible value. Define this new, rotated location of M_f to be M_r (eye midpoint rotated).

S14.1.6 *Measurement procedure.* Locate a 35 mm or larger format still camera, video camera, or digital equivalent such that the center of the camera's image plane is located at M_r and the camera lens is directed at the center of the visual display's rearview image. Affix a ruler at the base of the rearview image in an orientation parallel with a transverse cylinder centerline. Photograph the image of the visual display with the ruler included in the frame.

S14.1.6.1 *Extract photographic data.* Using the photograph, measure the horizontal width of a 50 mm delineated section of the in-photo ruler along the edge closest to the rearview image and at a point that would fall along the longitudinal centerline of the vehicle. Using the photograph, measure the horizontal width of the colored band at the upper portion of each of the three test objects located at positions A, B, and C in Figure 5. Define the measured horizontal widths of the colored bands of the three test objects as d_a, d_b, and d_c.

S14.1.6.2 *Obtain scaling factor.* Using the measured length of the 50 mm portion of the ruler as it appears in the photograph, divide this value by 50 mm to obtain a scaling factor. Define this scaling factor as s_{scale}.

S14.1.6.3 *Determine viewing distance.* Determine the actual distance from the rotated eye midpoint location (M_r) to the center of the rearview image. Define this viewing distance as a_{eye}.

S14.1.6.4 *Calculate visual angle subtended by test objects.* Use the following equation to calculate the subtended visual angles:

$$\theta_i = 60 \sin^{-1}\left(\frac{d_i}{a_{eye} s_{scale}}\right)$$

where *i* can take on the value of either *test object A, B,* or *C,* and arcsine is calculated in units of degrees.

S14.2 *Visual display luminance testing.* The visual display luminance is measured at room temperature in a dark room using a spectroradiometer. The minimum specified value of 500 cd/m² must be met at any measured point within the display.

S14.3 *Durability testing.*

S14.3.1 *Corrosion test procedure.* The vehicle is subjected to two 24-hour corrosion test cycles. In each corrosion test cycle, a portion of the vehicle, which must include all exterior components of the rear visibility system, is subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing* (incorporated by reference, see § 571.5) for a period of 24 hours. Allow 1 hour to elapse without spray between the two test cycles.

S14.3.2 *Humidity exposure procedure.* The vehicle is subjected to 24 consecutive 3-hour humidity test cycles. In each humidity test cycle, the exterior of the vehicle is subjected to a temperature of 100° + 7° − 0 °F (38° + 4 °C) with a relative humidity of not less than 90% for a period of 2 hours. After a period not to exceed 5 minutes, the exterior of the vehicle is subjected to a temperature of 32° + 5° − 0 °F (0° + 3° −0 °C) and a humidity of not more than 30% ±° 10% for 1 hour. Allow no more than 5 minutes to elapse between each test cycle.

S14.3.3 *Temperature exposure procedure.* The vehicle is subjected to 4 consecutive 2-hour temperature test cycles. In each temperature test cycle, the exterior of the vehicle is first subjected to a temperature of 176° ± 5 °F (60° ± 3 °C) for a period of one hour. After a period not to exceed 5 minutes, the exterior of the vehicle is subjected to a temperature of 32° + 5° − 0 °F (0° + 3° − 0 °C) for 1 hour. Allow no more than 5 minutes to elapse between each test cycle.

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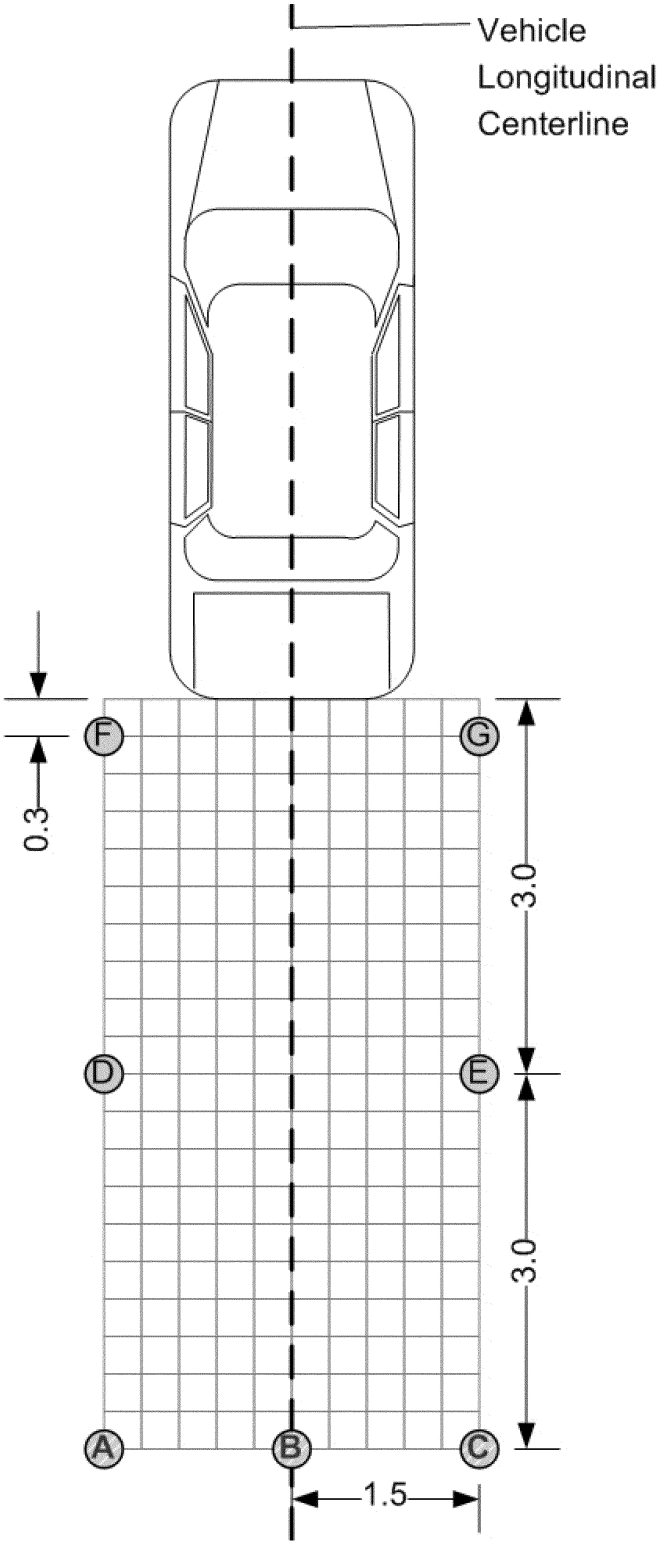

FIGURE 5: TEST CYLINDER LOCATIONS (Units in meters)

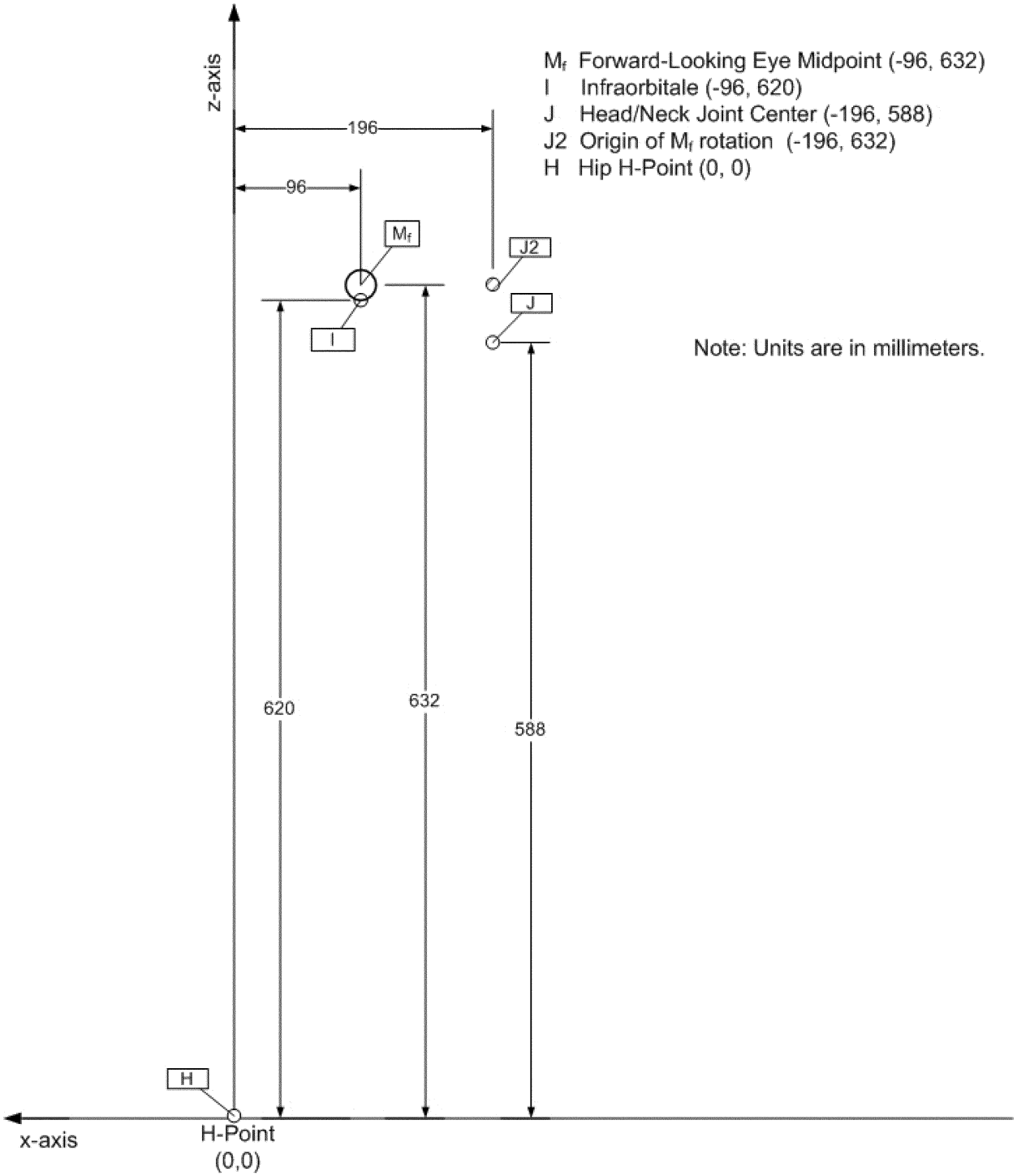

FIGURE 6: EYE MIDPOINT LOCATION (M_f) IN THE MID-SAGITTAL PLANE WITH RESPECT TO H POINT FOR FORWARD-LOOKING 50TH PERCENTILE MALE DRIVER SEATED WITH 25 DEGREE SEAT BACK ANGLE

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3. Section 571.500 is amended by adding paragraph (11) at the end of paragraph S5(b) to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

* * * * *

S5.* * *

(b)* * *

(11) Low-speed vehicles shall comply with the rear visibility requirements specified in S5.5 and S6.2 of FMVSS No. 111.

* * * * *

PART 585—PHASE–IN REPORTING REQUIREMENTS

4. The authority citation for part 585 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

5. Part 585 is amended by adding subpart M to read as follows:

Subpart M—Rear Visibility Improvements Reporting Requirements

Sec.
585.121 Scope.
585.122 Purpose.
585.123 Applicability.
585.124 Definitions.
585.125 Response to inquiries.
585.126 Reporting requirements.
585.127 Records.

Subpart M—Rear Visibility Improvements Reporting Requirements

§ 585.121 Scope.

This part establishes requirements for manufacturers of passenger cars, of trucks, buses, multipurpose passenger vehicles and low-speed vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the rear visibility requirements (S5.5 and S6.2) of Standard No. 111, Rearview mirrors (49 CFR 571.111).

§ 585.122 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the rear visibility requirements (S5.5 and S6.2) of Standard No. 111, Rearview mirrors (49 CFR 571.111).

§ 585.123 Applicability.

This part applies to manufacturers of passenger cars, of trucks, buses, multipurpose passenger vehicles and low-speed vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or less.

§ 585.124 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating or GVWR, low-speed vehicle, multipurpose passenger vehicle, passenger car, and truck* are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 585.125 Response to inquiries.

At anytime during the production years ending August 31, 2013, and August 31, 2014, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the rear visibility requirements of Standard No. 111, Rearview mirrors (49 CFR 571.111). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.126 Reporting requirements.

(a) *Advanced credit phase-in reporting requirements.* Within 60 days after the end of the production year ending August 31, 2012, each manufacturer choosing to certify vehicles manufactured during that production year as complying with the rear visibility requirements of Standard No. 111 (49 CFR 571.111) shall submit a report to the National Highway Traffic Safety Administration providing the information specified in paragraph (c) of this section and in § 585.2 of this part.

(b) *Phase-in reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 2013 and August 31, 2014, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the rear visibility requirements of Standard No. 111 (49 CFR 571.111) for its vehicles produced in that year. Each report shall provide the information specified in paragraph (d) of this section and in section 585.2 of this part.

(c) *Advanced credit phase-in report content; production of complying vehicles.* With respect to the reports identified in § 585.126(a), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that are certified as meeting the rear visibility requirements of Standard No. 111 (49 CFR 571.111).

(d) *Phase-in report content*—

(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing vehicles for sale in the United States must report the number of vehicles manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that vehicles produced during the preceding years are treated under Standard No. 111 as having been produced during the production year being reported on, information on the number of vehicles that meet the rear visibility requirements of Standard No. 111 (49 CFR 571.111).

§ 585.127 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.126 until December 31, 2020.

Issued on: November 29, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–30353 Filed 12–3–10; 8:45 am]

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