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Presidential Documents

Title 3—

The President

Proclamation 8618 of December 21, 2010

To Take Certain Actions Under the African Growth and Opportunity Act, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a "beneficiary sub-Saharan African country" if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an "eligible sub-Saharan African country" if the President determines that the country meets certain eligibility requirements.

3. In Proclamation 7657 of March 28, 2003, the President designated the Democratic Republic of Congo (DRC) as an eligible sub-Saharan African country pursuant to section 104 of the AGOA.

4. Proclamation 7657 also authorized the United States Trade Representative (USTR) to exercise the authority provided to the President under section 506A(a)(1) of the 1974 Act to designate the DRC as a beneficiary sub-Saharan African country.

5. Pursuant to the authority delegated to the USTR, on October 31, 2003, the USTR designated the DRC as a beneficiary sub-Saharan African country (68 *FR* 62158–04).

6. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)) authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

7. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that the DRC is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designation of the DRC as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act, effective on January 1, 2011.

8. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the "USIFTA"), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the "USIFTA Act") (19 U.S.C. 2112 note).

9. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing

duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the USIFTA.

10. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the "2004 Agreement").

11. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

12. On December 10, 2008, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2009, to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

13. In Proclamation 8334 of December 31, 2008, the President determined that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA to extend such duty-free treatment through December 31, 2009. In that proclamation, the President also modified the Harmonized Tariff Schedule of the United States (HTS) to provide duty-free access into the United States through December 31, 2009, for specified quantities of certain agricultural products of Israel.

14. On December 6, 2009, the United States entered into a further agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2010, to allow for further negotiations on an agreement to replace the 2004 Agreement.

15. In Proclamation 8467 of December 23, 2009, I determined that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA to extend such duty-free treatment through December 31, 2010. In that proclamation, I also modified the HTS to provide duty-free access into the United States through December 31, 2010, for specified quantities of certain agricultural products of Israel.

16. On December 12, 2010, the United States entered into a further agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2011, to allow for further negotiations on an agreement to replace the 2004 Agreement.

17. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2011, for specified quantities of certain agricultural products of Israel.

18. During the Uruguay Round of Multilateral Trade Negotiations (the "Uruguay Round"), a group of major trading countries agreed to reciprocal elimination of tariffs on certain pharmaceuticals and chemical intermediates, and that participants in this agreement would revise periodically the list of products subject to duty-free treatment. On December 13, 1996, as the result of negotiations under the auspices of the World Trade Organization (WTO), the United States and 16 other WTO members agreed to eliminate tariffs on additional pharmaceuticals and chemical intermediates. The United States implemented this agreement in Proclamation 6982 of April 1, 1997. In 1998, the United States and 21 other WTO members negotiated a second revision to the list of products subject to duty-free treatment. The United

States implemented this revision in Proclamation 7207 of July 1, 1999. In 2006, the United States and 30 other WTO members concluded negotiations, under the auspices of the WTO, on a further revision to the list of pharmaceuticals and chemical intermediates subject to duty-free treatment. The United States implemented this revision in Proclamation 8095 of December 29, 2006. The United States and 31 other WTO members have negotiated, under the auspices of the WTO, a fourth revision to the list of pharmaceuticals and chemical intermediates subject to duty-free treatment.

19. Section 111(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3521(b)) authorizes the President under specified circumstances to proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX-United States of America, annexed to the Marrakesh Protocol to the GATT 1994 (Schedule XX) for products that were the subject of reciprocal duty elimination negotiations during the Uruguay Round, if the United States agrees to such action in a multilateral negotiation under the auspices of the WTO.

20. On September 15, 2010, consistent with section 115 of the URAA (19 U.S.C. 3524), the USTR submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that set forth the proposed further revision to the list of pharmaceuticals and chemical intermediates subject to duty-free treatment. The consultation and layover period specified in section 115 ended on November 14, 2010.

21. Pursuant to section 111(b) of the URAA, I have determined that Schedule XX should be modified to reflect the implementation by the United States of the multilateral agreement on certain pharmaceuticals and chemical intermediates negotiated under the auspices of the WTO. In addition, I have determined that the pharmaceuticals appendix to the HTS should be modified to reflect the duty eliminations provided for in that agreement.

22. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

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 of America, including but not limited to section 104 of the AGOA, title V and section 604 of the 1974 Act, section 4 of the USIFTA Act, and section 111 of the URAA do proclaim that:

(1) The designation of the DRC as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act is terminated, effective on January 1, 2011.

(2) In order to reflect in the HTS that beginning on January 1, 2011, the DRC shall no longer be designated as a beneficiary sub-Saharan African country, general note 16(a) to the HTS is modified by deleting "Democratic Republic of Congo" from the list of beneficiary sub-Saharan African countries.

(3) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2011, the HTS is modified as provided in the Annex to this proclamation.

(4)(a) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2011.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by the Annex to this proclamation, shall continue in effect through December 31, 2011.

(5) In order to implement the multilateral agreement negotiated under the auspices of the WTO to eliminate tariffs on certain pharmaceutical

products and chemical intermediates, and to make technical corrections in the tariff treatment accorded to such products, the HTS is modified as set forth in Publication 4208 of the United States International Trade Commission, entitled "Modifications to the Harmonized Tariff Schedule of the United States to Implement Changes to the Pharmaceutical Appendix" (Publication 4208), which is incorporated by reference into this proclamation.

(6) The modifications to the HTS made in Publication 4208 shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2011.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-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.

Billing code 3195–W1–P

ANNEX

TO EXTEND TEMPORARILY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2011 and before the close of December 31, 2011, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2010" and by inserting in lieu thereof "December 31, 2011".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2011 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2011 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2011 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2011 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2011 707,000".

[FR Doc. 2010–32610
Filed 12–23–10; 8:45 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 8619 of December 21, 2010

National Mentoring Month, 2011

By the President of the United States of America

A Proclamation

Across our Nation, mentors steer our youth through challenging times and support their journey into adulthood. During National Mentoring Month, we honor these important individuals who unlock the potential and nurture the talent of our country, and we encourage more Americans to reach out and mentor young people in their community.

The dedication of mentors has helped countless young men and women succeed when they might have otherwise fallen short of their full potential. Mentors can provide a steady presence and share their valuable knowledge and experiences. Even brief amounts of quality time set aside by these compassionate adults can have a lasting impact on the development of a child. Mentors can also support the lessons of parents and teachers by encouraging students to complete their schoolwork and by instilling enduring values of commitment and persistence. From coaches to community leaders, tutors to trusted friends, mentors are working with today's youth to develop tomorrow's leaders.

We know the difference that a responsible, caring adult can make in a child's life. Effective mentoring programs can result in better school attendance, positive student attitudes, and a reduced likelihood of initiating drug and alcohol use. Across the Federal Government, we have provided resources to expand mentoring opportunities for America's young people. We are increasing mentoring efforts in Native American and rural communities and are working to ensure our investments are coordinated, effective, and focused on those most in need. To help build healthy families and communities and provide our youth with strong role-models, I launched the President's Fatherhood and Mentoring Initiative. First Lady Michelle Obama and I have also established mentoring programs within the White House, pairing staff with young men and women in the Washington, D.C., area. For information and resources about mentoring opportunities, I encourage all Americans to visit: www.Serve.gov/Mentor.

Many Americans have realized their promise because a mentor encouraged them to reach for new heights and guided them along the path to achievement. The contributions of these engaged adults extend beyond the lives they touch and have a lasting impact that strengthens our country and our future.

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 January 2011 as National Mentoring Month. I call upon all public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-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. 2010–32617
Filed 12–23–10; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8620 of December 21, 2010

National Stalking Awareness Month, 2011

By the President of the United States of America

A Proclamation

Stalking is a serious and pervasive crime that affects millions of Americans each year in communities throughout our country. Though we have gained a better understanding of stalking and its prevalence since the passage of the Violence Against Women Act in 1994, this dangerous and criminal behavior is still often mischaracterized as harmless. During Stalking Awareness Month, we acknowledge the seriousness of stalking, we recognize its impact on victims, and we recommit to reducing its incidence.

Persistent stalking and harassment can lead to serious consequences for victims, whose lives may be upended by fear. Some victims may be forced to take extreme measures to protect themselves, such as changing jobs, relocating to a new home, or even assuming a new identity. Stalking can happen to anyone, and most victims are stalked by someone they know. Young adults are particularly vulnerable, and women are at greater risk for stalking victimization than men.

Stalking can be a difficult crime to recognize. The majority of survivors do not report stalking victimization to the police, in part because perpetrators use a variety of tactics to intimidate and harass their victims. Increasingly, stalkers use modern technology to monitor and torment their victims, and one in four victims report some form of cyberstalking—such as threatening emails or instant messaging—as part of their harassment.

My Administration is working across the Federal Government to protect victims of violence and enable survivors to break the cycle of abuse or harassment. Stalking affects too many Americans to remain a hidden crime, and a strong stand is required in order to both support victims and hold perpetrators accountable.

As a Nation, we have made progress, but much work remains to respond to this criminal behavior. We must work together to educate the public about the potentially deadly nature of stalking, to encourage victims to seek help, to inform criminal justice professionals about the intersection of stalking and other dangerous crimes, and to support law enforcement in their efforts.

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 January 2011 as National Stalking Awareness Month. I call on all Americans to learn to recognize the signs of stalking, acknowledge stalking as a serious crime, and urge those impacted not to be afraid to speak out or ask for help. Let us also resolve to support victims and survivors, and to create communities that are secure and supportive for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-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. 2010–32619
Filed 12–23–10; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
Vol. 75, No. 247
Monday, December 27, 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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0037]

South American Cactus Moth Quarantine; Addition of the State of Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the South American cactus moth regulations by adding the entire State of Louisiana to the list of quarantined areas. The interim rule restricted the interstate movement of regulated articles from areas in the State of Louisiana. This interim rule was necessary to prevent the artificial spread of the South American cactus moth to noninfested areas of the United States.

DATES: Effective on December 27, 2010, we are adopting as a final rule the interim rule published at 75 FR 41073–41074 on July 15, 2010.

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

SUPPLEMENTARY INFORMATION:

Background

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

The South American cactus moth regulations in 7 CFR 301.55 through 301.55–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of South American cactus moth to noninfested areas of the United States.

In an interim rule [1] effective and published in the **Federal Register** on July 15, 2010 (75 FR 41073–41074, Docket No. APHIS–2010–0037), we amended the regulations by adding the State of Louisiana to the list of quarantined areas.

Comments on the interim rule were required to be received on or before September 13, 2010. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 75 FR 41073–41074 on July 15, 2010.

Done in Washington, DC, this 16th day of December 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32261 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0037.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0089]

Plum Pox Virus; Update of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the plum pox virus (PPV) regulations by adding portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas and restricting the interstate movement of regulated articles from these quarantined areas. We are also amending the regulations by removing the townships of Latimore and Huntington in Adams County, PA, from the list of quarantined areas. These actions are necessary to prevent the spread of PPV from the quarantined areas of New York to uninfected areas of the United States and to relieve restrictions in Pennsylvania that are no longer necessary.

DATES: This interim rule is effective December 27, 2010. We will consider all comments that we receive on or before February 25, 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-2010-0089* 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–2010–0089, 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–2010–0089.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Senior Plant Pathologist/National Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The plum pox virus (PPV) is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long-distance spread of PPV occurs by budding and grafting with infected plant material and through movement of farm tools, equipment, and infected budwood, nursery stock, and other plant parts.

The regulations in Subpart—Plum Pox (7 CFR 301.74 through 301.74–5), referred to below as the regulations, quarantine areas of the United States where PPV has been detected and restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of PPV into uninfected areas of the United States.

Surveys funded by the Animal and Plant Health Inspection Service (APHIS) and conducted by inspectors of the New York State Department of Agriculture and Markets have resulted in the detection of PPV in the State of New York. Officials in New York have quarantined the infected areas to prevent the spread of PPV to uninfected areas. By establishing these quarantined areas, the State of New York has restricted the intrastate movement of regulated articles from the quarantined areas. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas within New York to prevent the spread of PPV to other States.

The regulations in § 301.74–3(a) provide that the Administrator of APHIS will list as a quarantined area any State, or any portion of a State, where PPV has been detected through inspection and laboratory testing, where the Administrator has reason to believe that PPV is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities where PPV has been detected.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will prevent the interstate spread of PPV.

In accordance with these criteria and the recent PPV findings described above, we are amending § 301.74–3(c) to add portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas. Descriptions of these quarantined areas are set forth in the regulatory text below.

Additionally, we are removing the townships of Latimore and Huntington in Adams County, PA, from the list of quarantined areas in § 301.74–3(c). The townships were removed from quarantine on October 29, 2009, based on 3 years of negative survey results and the subsequent determination by the Administrator that PPV no longer exists in Pennsylvania.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

For producers in New York, the intent of the quarantine is to prevent the spread of PPV and to protect the rest of the stone fruit industry. The benefits of the quarantine, derived from preventing the spread of plum pox to other stone fruit producing regions, are expected to outweigh the costs. Producers in the quarantined area will bear the cost of having a limited marketing area for host material. Since the fruit itself is not a vector of the disease, the quarantine imposes no restrictions on the movement of fruit out of the quarantined area. Therefore, the growers in the quarantined area are able to sell and move their fruit production without restriction. The quarantine does restrict the movement of budwood and root stock. However, stone fruit growers move trivial quantities of plant material for commercial purposes. Because by far the vast majority of income of growers in this area is from fruit production, the restrictions placed on growers in the quarantined area should have little impact.

Producers in Adams County, PA, where the quarantine is being lifted, will benefit from the ability to move host material to areas outside the quarantined area. This action will impose no costs on producers in Pennsylvania while providing benefits in the form of increased ability to market goods that were previously restricted.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. In § 301.74–3, paragraph (c) is revised to read as follows:

§ 301.74–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

New York

Niagara County. (1) That area of Niagara County in the Towns of Burt, Newfane, and Wilson bordered on the north by Lake Ontario; bordered on the west by Maple Road; then south on Maple Road to Wilson-Burt Road; then east on Wilson-Burt Road to Beebe Road; then south on Beebe Road to Ide Road; then east on Ide Road to Route 78 (Lockport-Olcott Road); then north on Route 78 (Lockport-Olcott Road) to the Lake Ontario shoreline.

(2) That area of Niagara County in the Town of Lewiston bordered on the west by Porter Center Road starting at its intersection with Route 104 (Ridge Road); then north-northeast on Porter Center Road to Langdon Road; then east on Langdon Road to Dickersonville Road; then north on Dickersonville Road to Schoolhouse Road; then east on Schoolhouse Road to Ransomville Road; then south on Ransomville Road to Route 104 (Ridge Road); then northeast on Route 104 (Ridge Road) to Simmons Road; then south on Simmons Road to Albright Road; then east on Albright Road to Townline Road; then south on Townline Road to Lower Mountain Road; then west on Lower Mountain Road to Meyers Hill Road; then south on Meyers Hill Road to Upper Mountain Road; then west on Upper Mountain Road to Indian Hill Road; then northeast on Indian Hill Road to Route 104 (Ridge Road); then east on Route 104 (Ridge Road) to Porter Center Road.

(3) That area of Niagara County bordered on the north by Lake Ontario and on the east by Keg Creek; then south on Keg Creek to Route 18 (Lake Road); then east on Route 18 (Lake Road) to Hess Road; then south on Hess Road to Drake Settlement Road; then west on Drake Settlement Road to Transit Road; then north on Transit Road to Route 18 (Lake Road); then west on Route 18 (Lake Road) to Lockport Olcott Road; then north on Lockport Olcott Road to the Lake Ontario shoreline.

Orleans County. That area of Orleans County in the Towns of Ridgeway and Gaines bordered on the north by Route 104 (Ridge Road) at its intersection with Eagle Harbor Waterport Road; then south on Eagle Harbor Waterport Road to Eagle Habor Knowlesville Road; then west on Eagle Harbor Knowlesville Road to Presbyterian Road; then southwest on Presbyterian Road to Longbridge Road; then south on Longbridge Road to State Route 31; then west on State Route 31 to Wood Road; then south on Wood Road to West County House Road; then west on West County House Road to Maple Ridge Road; then west on Maple Ridge Road to Culvert Road; then north on Culvert Road to Telegraph Road; then west on Telegraph Road to Beales Road; then north on Beales Road to Portage Road; then east on Portage Road to Culvert Rd; then north on Culvert Road to Route 104 (Ridge Road).

Wayne County. (1) That area of Wayne County in the Town of Sodus bordered on the north by Lake Road at its intersection with Redman Road; then east on Lake Road to Maple Avenue; then south on Maple Avenue to Middle Road; then west on Middle Road to Rotterdam Road; then south on Rotterdam Road to State Route 104; then west on State Route 104 to Pratt Road; then south on Pratt Road to Ridge Road; then west on Ridge Road to Richardson Road; then south on Richardson Road to Tripp Road; then south on Tripp Road to Podger Road; then west on Podger Road to East Townline Road; then north on East Townline Road to Everdyke Road; then west on Everdyke Road to Russell Road; then south on Russell Road to Pearsall Road; then west on Pearsall Road to State Route 21; then north on State Route 21 to State Route 104; then east on State Route 104 to East Townline Road; then north on East Townline Road to Van Lare Road; then east on Van Lare Road to Redman Road; then north on Redman Road to Lake Road.

(2) That area of Wayne County in the Towns of Ontario and Williamson bordered on the north by Shepard Road at its intersection with Fisher Road; then east on Shepard Road to Salmon Creek Road; then southwest on Salmon Creek Road to Kenyon Road; then west on Kenyon Road to Furnace Road; then north on Furnace Road to Putnam Road; then east on Putnam Road to Fisher Road; then north on Fisher Road to Shepard Road.

(3) That area of Wayne County in the Town of Sodus bordered on the northeast by the Sodus Bay shoreline at Ridge Road; then west on Ridge Road to Boyd Road; then north on Boyd Road to Sergeant Road; then north on Sergeant Road to Morley Road; then east on Morley Road to State Route 14; then south on State Route 14 to Sill Road; then northeast on Sill Road and continuing to the shoreline of Sodus Bay.

Done in Washington, DC, this 16th day of December 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32260 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2009–0083]

RIN 0579–AD22

Brucellosis Class Free States and Certified Brucellosis-Free Herds; Revisions to Testing and Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations to reduce the amount of testing required to maintain Class Free status for States that have been Class Free for 5 or more years and have no *Brucella abortus* in wildlife. We are also removing the provision for automatic reclassification of any Class Free State or area to a lower status if two or more herds are found to have brucellosis within a 2-year period or if a single brucellosis-affected herd is not depopulated within 60 days. Further, we are reducing the age at which cattle are included in herd blood tests. We are also adding a requirement that any Class Free State or area with *Brucella abortus* in wildlife must develop and implement a brucellosis management plan approved by the Administrator in order to maintain Class Free status. Finally, we are providing an alternative testing protocol for maintaining the certified brucellosis-free status of dairy herds, which will give producers more flexibility for the herd certification process. These changes are necessary to refocus resources to control and prevent the spread of brucellosis and to protect and maintain the economic viability of the domestic livestock industry.

DATES: This interim rule is effective December 27, 2010. We will consider all comments that we receive on or before February 25, 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-2009-0083* 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–2009–0083, 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–2009–0083.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Debbi Donch, National Brucellosis Epidemiologist and Program Manager, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease, caused by bacteria of the genus *Brucella* that affects both animals and humans. The disease mainly affects cattle, bison, and swine; however, goats, sheep, horses, and humans are susceptible as well. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella abortus* (*B. abortus*) infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C status are required to be placed under Federal quarantine. Restrictions on moving cattle and bison interstate become less stringent as a State or area approaches or achieves Class Free status.

APHIS' regulations support a cooperative Federal-State-industry program that has made considerable progress in eradicating brucellosis from the United States. By 2007, the national brucellosis program had achieved an all-time low national herd prevalence of 0.0001 percent (one affected herd in approximately 1 million cattle herds). In February 2008, every State, along with Puerto Rico and the U.S. Virgin Islands, achieved Class Free status for the first time in the program's 74-year history. Currently, all States, including Puerto Rico and the U.S. Virgin Islands, are Class Free for brucellosis. In addition, every State except Montana, Idaho, Wyoming, and Texas has been classified as free from brucellosis for at least 5 consecutive years. Each of the three States in the Greater Yellowstone Area, Idaho, Montana and Wyoming, experienced a temporary loss of Class Free status for a period of time during the past 7 years. The source of disease in these three States is attributable to exposure to brucellosis-affected wildlife in the Greater Yellowstone Area.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. In order to maintain Class Free classification, the regulations have required Class Free States or areas to conduct surveillance by carrying out as many brucellosis ring tests per year as are necessary to ensure that all cattle herds producing milk for sale are tested at least twice per year at approximately 6-month intervals. In addition, the regulations have required Class Free States or areas to collect blood samples from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subject the samples to an official brucellosis test. The regulations have further provided that a Class Free State or area may have no more than one herd determined to be affected with brucellosis within a 2-year period, and if a herd is found to be affected with brucellosis, the herd must be depopulated within 60 days of an infected animal being detected. If two or more herds are found to be affected with brucellosis within a 2-year period or if an affected herd is not depopulated within 60 days, the State or area loses its Class Free status. The regulations have provided no exceptions to these requirements for reclassification.

These requirements have encouraged producers to depopulate brucellosis-affected herds to prevent a reclassification of State status. Cattle and bison from States or areas reclassified to a lower status—usually Class A—are subject to testing requirements for interstate movement. Furthermore, the regulations in 9 CFR

part 51 authorize APHIS to pay indemnity to owners of animals destroyed because of brucellosis. These payments provide a financial incentive for owners to elect depopulation instead of maintaining a herd under quarantine.

APHIS has reevaluated this approach and no longer uniformly recommends whole herd depopulation for disease management. The number of brucellosis-infected animals found in a herd is often small and test and removal of the infected animals will often mitigate transmission of brucellosis within and from the herd. In such circumstances, it is difficult to justify depopulation. Limited indemnity funds also make herd depopulation a less viable option, especially as herd sizes continue to increase. In addition, the public perceives whole-herd depopulation as a less acceptable approach for disease management. Changing social values concerning the care and well-being of livestock, the recognition of the environmental consequences of animal disposal, and the value of proteins derived from livestock also drive the need to develop new approaches to disease control.

APHIS has announced its intention to take a new approach to managing the bovine brucellosis eradication program that will allow APHIS and States to apply limited resources effectively and efficiently and focus on current program disease-risk issues. The new approach for the program, which includes strategies for surveillance and depopulation and would involve revisions to the brucellosis regulations, is described in the brucellosis concept paper that was made available for public comment on October 5, 2009. (*See* "A Concept Paper for a New Direction for the Bovine Brucellosis Program," 74 FR 51115–51116; Docket No. APHIS–2009–0006). In the meantime, the requirements for maintaining Class Free status give APHIS little flexibility in reclassifying States or areas based on risk. This lack of flexibility is an obstacle to effectively addressing the current challenges of the brucellosis program. When a Class Free State is reclassified to a lower status, APHIS and the State expend scarce resources to enable the State to regain its status or to establish split-State status. These resources could be applied more effectively to program activities that would have a greater impact on disease management and elimination. Additionally, many producers in Class Free States that are reclassified incur additional costs to meet testing and other interstate movement requirements associated with the reclassification, regardless of the risk associated with their particular herd.

As we proceed to develop this new approach, APHIS intends to continue making decisions regarding the disposition of each brucellosis-affected herd after evaluating the circumstances surrounding each herd. APHIS will continue to offer indemnity (depending on the availability of funding) to compensate producers considering depopulation when the evaluation indicates that other options will not mitigate disease spread, there is an imminent public or animal health risk, and/or it is cost-beneficial to do so. Where depopulation and indemnity are not considered appropriate, APHIS will continue to rely on State animal health agencies to maintain affected herds under quarantine and implement a program to periodically test the animals for brucellosis and remove and destroy those that do not test negative. "Test and remove" strategies can be an effective alternative to depopulation provided that the State or area maintains all affected herds under quarantine and applies adequate measures within the State to detect and prevent the spread of brucellosis, including from infected wildlife. When a Class Free State or area implements all of these measures, APHIS does not believe it is necessary to reclassify the State or area to a lower status or to restrict the interstate movement of all cattle and bison from the State or area in order to prevent the interstate spread of brucellosis.

Changes to Requirements for Maintaining Class Free Status

For the reasons given above, we are removing the requirement that a Class Free State or area must lose its Class Free status if two or more herds are found to have brucellosis within 24 months or if a brucellosis-affected herd is not depopulated within 60 days. We will allow a Class Free State or area to maintain its Class Free status if:

- The affected herds are maintained under quarantine;
- A herd plan has been implemented for each affected herd to prevent the spread of brucellosis;
- The animals under quarantine are periodically tested for brucellosis as required by the Administrator and all animals that do not test negative are removed and destroyed until there is no evidence of brucellosis within the herd; and
- The State conducts surveillance adequate to detect brucellosis if it is present in other herds or species.

We are retaining the provision that an epidemiological investigation must be performed and that herds adjacent to the affected herd, herds from which animals may have been brought into the affected herd, and herds which may have had contact with or accepted animals from affected herds, must be epidemiologically investigated to confirm that brucellosis has not spread.

The Administrator may reclassify a State or area to a lower status if these conditions are not met or under any other circumstances if the Administrator determines it is necessary to do so to prevent the spread of brucellosis.

Cattle and bison from Class Free States or areas that maintain affected herds under quarantine without loss of Class Free status would be subject to the same interstate movement requirements as cattle and bison from Class Free States or areas with 0.0 percent of field strain brucellosis, except as otherwise required by a brucellosis management plan, as discussed below.

Consistent with this change in the regulations, APHIS is allowing Idaho to use a test and remove strategy on a brucellosis-affected herd identified in November 2009 without loss of Class Free status.

Another change to the requirements for maintaining Class Free status concerns brucellosis management plans. We are requiring any Class Free State or area in which the Administrator has determined wildlife are infected with *B. abortus* to develop and implement a brucellosis management plan approved by the Administrator. The existence of *B. abortus* in wildlife will be determined by the Administrator, based on, but not limited to, histopathology, testing data, or epidemiology. The Administrator may also require a Class Free State or area to develop and implement a brucellosis management plan under any other circumstances if the Administrator determines it is necessary to prevent the spread of brucellosis. The State must sign a memorandum of understanding (MOU) with the Administrator that describes its brucellosis management plan. The brucellosis management plan must define and explain the basis for the geographic area in which a disease risk exists from *B. abortus* and to which the brucellosis management plan applies. The brucellosis management plan must also describe the surveillance activities that the State will conduct to identify occurrence of *B. abortus* in domestic livestock and wildlife and potential risks for spread of the disease. The brucellosis management plan must also describe mitigation activities to prevent the spread of *B. abortus* from domestic livestock and/or wildlife, as applicable. The Administrator may reclassify to a lower status any State or area that has

not implemented an approved brucellosis management plan within 6 months of being required to develop one.

For States or areas that have been Class Free for 5 or more years and do not have *B. abortus* in wildlife, we are also revising requirements for maintaining Class-Free status by removing the requirement for twice-yearly brucellosis ring testing of dairy cattle herds producing milk for sale and the requirement for each State to collect blood samples from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering facility and subject the samples to an official brucellosis test. Instead, we will require that all recognized slaughtering establishments in such States or areas must, upon request by APHIS, agree to participate in slaughter surveillance testing as part of a new national bovine brucellosis surveillance plan being developed by APHIS. The new plan, along with the changes made in this interim rule, will allow us to reduce the level of surveillance testing in States or areas that have been Class Free for 5 or more years and do not have *B. abortus* in wildlife. This will eliminate redundancies in slaughter surveillance testing and increase the efficiency of the bovine brucellosis slaughter surveillance program, allowing us to focus activities on States and areas of greater risk for spreading brucellosis (*i.e.,* States and areas that have *B. abortus* in wildlife). The slaughter surveillance sampling strategy APHIS is developing as part of the new national bovine brucellosis surveillance plan provides 95 percent confidence of detecting brucellosis at a prevalence level of less than 1 infected animal per 1 million animals (0.0001 percent) in the National dairy and beef cattle populations. Information about the statistical analysis and the new national brucellosis surveillance plan is available to the public on APHIS' brucellosis Web site (*http://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/*).

Changes to Requirements for Herd Blood Tests

The regulations include, in some cases, requirements for blood testing of herds from which cattle and bison intended for interstate movement originate or blood testing of herds identified as adjacent, source, or contact herds in an epidemiologic investigation. In the definition for *herd blood test,* the regulations list cattle and bison to be included in herd blood tests. Prior to this interim rule, we required the following sexually intact cattle and bison to be included in herd blood tests:

- Cattle and bison 6 months of age and older if not vaccinated;
- Cattle and bison 20 months of age and older if vaccinated and a dairy breed;
- Cattle and bison 24 months of age and older if vaccinated and a beef breed; and
- Cattle and bison of any age if vaccinated and parturient or post-parturient.

These age requirements were established because the previously used *B. abortus* Strain 19 vaccine had the propensity to cause false positive test results in younger vaccinated animals. The *B. abortus* RB 51 vaccine that is now in use, and that has been in use for the past 13 years, does not have the propensity to cause false positive test results. Therefore, we are making a change in our definition of *herd blood test* to require that all sexually intact cattle and bison 6 months of age and older be included in all herd blood tests (vaccinated cattle and bison of any age that are parturient or post-parturient will continue to be included in herd blood tests). When herd blood tests are required, the inclusion of official vaccinates 6 months of age and older will ensure that brucellosis is detected in younger animals that may be infected.

Changes to Requirements for Certified Brucellosis-Free Herds

Under the current regulations, interstate movement restrictions for cattle or bison from certified brucellosis-free herds may be less restrictive than those applied to other cattle or bison moving from the State or area. The requirements for achieving certified brucellosis-free herd status are contained in the definition of *certified brucellosis-free herd.* For dairy herds, the regulations have provided that certification may be achieved through negative results to two herd blood tests or through negative results to a series of brucellosis ring tests, followed by a negative herd blood test.

The brucellosis ring test is conducted on milk from dairy animals. Additional types of brucellosis tests for milk are under development and may be approved for use in the brucellosis program. To allow for use of new milk tests, if approved, we are amending the provisions for certifying dairy herds to provide for use of either the brucellosis ring test or another official brucellosis milk test approved by the Administrator.

To maintain certification, the regulations have required that dairy herds must test negative to a herd blood test conducted within a certain period of time following the initial certification. As an alternative, this rule will allow dairy herds to maintain certification through negative results to a series of four brucellosis ring tests, or through another testing protocol if the Administrator finds that the protocol is adequate to determine there is no evidence of brucellosis in the herd.

These changes will give producers more options for achieving and maintaining certified brucellosis-free status for dairy herds.

Miscellaneous Changes

As explained earlier, the regulations require Class Free States or areas to conduct certain surveillance testing in order to maintain Class Free status. Under this interim rule, States that have not been Class Free for 5 or more years or that have *B. abortus* in wildlife must continue to conduct the same level of surveillance testing as in the past. However, as an alternative to conducting brucellosis ring tests, this interim rule will allow use of another official brucellosis milk test if one is approved by the Administrator for use in the brucellosis program. This change is in the definition of *Class Free State or area,* paragraph (a)(1)(ii)(A).

We are also making several other minor changes to the regulations. We are correcting an oversight in paragraph (d) under the definition for *approved intermediate handling facility* by extending the period of time from 1 year to 2 years for retaining documents related to cattle and bison that are or have been in the facility. We are making this change to be consistent with current record-keeping practices required under § 71.20 of the regulations, which contains provisions for stockyards, livestock facilities, buying stations, concentration points, or "any other premises under State or Federal veterinary supervision where livestock are assembled" to acquire and retain status as approved facilities. One of the requirements for qualifying as an approved facility, including an approved intermediate handling facility, is the retention, for a period of 2 years, of all documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility. When the 2-year record requirement was established in § 71.20 on October 31, 1996 (61 FR 56155–56165, Docket No. 96–041–1), we neglected to make the corresponding change in the definition of approved intermediate handling facilities. We are correcting that oversight now.

In addition, in paragraph (c)(1) under the definition for *certificate,* we are correcting a typographical error by replacing the word "stabled" with the word "stapled."

Finally, we are reorganizing the requirements under the definitions for *Certified brucellosis-free herd* and *Class Free State or area* to make them clearer to read.

Immediate Action

Immediate action is warranted to remove requirements that present an obstacle to effectively managing the brucellosis program. Changes to the requirements for maintaining Class Free status, in particular, are necessary so that APHIS and States can use available resources on program activities that will have the greatest impact on disease management and disease risk mitigation. The changes in age requirements for sexually intact vaccinates to be included in herd blood testing are necessary to ensure that brucellosis is detected in younger animals that may be infected. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis identifies beef cattle and dairy operations as the small entities most likely to be affected by this action and considers the effects of the rule on the beef and dairy industry. Based on the information presented in the analysis, the Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities. The full economic analysis may be viewed on the Regulations.gov Web site (*see* **ADDRESSES** for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2009–0083. Please send a copy of your comments to: (1) Docket No. APHIS–2009–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A 03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Rroom 404 W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 60 days of publication of this interim rule.

The APHIS bovine brucellosis program regulations in 9 CFR part 78 provide a system for classifying States or portions of States according to the rate of *Brucella abortus* infection present and the general effectiveness of a brucellosis control and eradication program. The program also provides for the creation of brucellosis management areas within a State and for testing and movement mitigation activities before regulated animals are permitted to move interstate. This system enhances the ability of States to move healthy, brucellosis-free cattle and bison interstate and internationally. This management area and testing system also enhances the effectiveness of the Bovine Brucellosis Eradication Program by decreasing the likelihood that infected animals will be moved interstate or internationally.

The creation of brucellosis management areas allow States that have found *B. abortus* in wildlife (which are nonregulated animals) to mitigate the risk of transmission and spread of disease while maintaining the State's disease-free status in regulated domestic livestock. The State must sign a memorandum of understanding (MOU) with the Administrator that describes its brucellosis management plan. The brucellosis management plan developed by the State must define the geographic brucellosis management area and describe the surveillance and mitigation activities that the State will conduct to identify occurrence of *B. abortus* in domestic livestock and wildlife and potential risks for spread of the disease.

The information provided by these documents is critical to APHIS' mission to prevent the introduction or spread of bovine brucellosis. APHIS is asking the Office of Management and Budget (OMB) to approve the use of these information-gathering activities for 3 years in connection with APHIS' bovine brucellosis program.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 300 hours per response.

Respondents: State animal health and wildlife officials.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 6

Estimated total annual burden on respondents: 1,800 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 78.1 is amended as follows:

■ a. In the definition of *Approved intermediate handling facility,* by revising paragraph (d) to read as set forth below.

■ b. In the definition of *Certificate,* by revising paragraph (c)(1) to read as set forth below.

■ c. By revising the definitions of *Certified brucellosis-free herd, Class Free State or area,* and *Herd blood test* to read as set forth below.

§ 78.1 Definitions.

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Approved intermediate handling facility.

* * * * *

(d) Any document relating to cattle or bison which are or have been in the facility shall be maintained by the facility for a period of 2 years;

* * * * *

Certificate.

* * * * *

(c) * * *

(1) A legible copy of the official brand inspection certificate must be stapled to the original and each copy of the certificate;

* * * * *

Certified brucellosis-free herd. A herd of cattle or bison which has qualified for and whose owner has been issued a certified brucellosis-free herd certificate signed by the appropriate State animal health official and the Veterinarian in Charge.

(a) *Certification.* The following methods may be used to qualify a herd:

(1) By conducting at least two consecutive negative herd blood tests not less than 10 months nor more than 14 months apart; or

(2) As an alternative for dairy cattle, by conducting a minimum of four consecutive negative brucellosis ring tests, or other official brucellosis milk test approved by the Administrator, at not less than 90-day intervals, followed by a negative herd blood test within 90 days after the last negative brucellosis ring test or other official brucellosis milk test approved by the Administrator.

(b) *Maintaining certification.* Certified brucellosis-free herd status will remain in effect for 1 year beginning with the date of issuance of the certified brucellosis-free herd certificate. The following methods may be used to maintain herd certification:

(1) A negative herd blood test must be conducted within 10 to 12 months of the last certification date for continuous status. Lapsed certification may be reinstated if a herd blood test is conducted within 14 months of the last certification date. A new recertification test date may be established if requested by the owner and if the herd is negative to a herd blood test on that date, provided that date is within 1 year of the previous certification date.

(2) As an alternative for dairy cattle, a minimum of four consecutive negative brucellosis ring tests, or other official brucellosis milk test approved by the Administrator, must be conducted at approximately 90-day intervals, with the fourth test conducted within 60 days before the 1-year anniversary of the previous certification date.

(3) The Administrator may allow another testing protocol to be used if the Administrator determines that such a protocol is adequate to determine there is no evidence of brucellosis in the herd.

(c) *Loss of certification.* A herd which loses certified brucellosis-free herd status because a brucellosis reactor is found in the herd may be recertified only by repeating the certification process, except that certified brucellosis-free herd status may be reinstated without repeating the certification process if epidemiological studies and bacteriological cultures conducted by an APHIS representative or State representative show that the herd was not affected with *Brucella abortus.*

* * * * *

Class Free State or area. A State or area which meets standards for classification as a Class Free State or area and is certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Administrator. For initial classification or reclassification, all cattle herds in the State or area must have remained free of *Brucella abortus* for 12 consecutive months, based on surveillance and epidemiologic investigations as required for Class A States or areas, and the State or area must have a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to *Brucella abortus,* of 0.0 percent or 0 herds per 1,000. Any reclassification will be made in accordance with § 78.40 of this part. All cattle herds in the State or area in which brucellosis has been known to exist must be released from any State or Federal brucellosis quarantine prior to classification. In addition, if any herds of other species of domestic livestock have been found to be affected with brucellosis, they must be subjected to an official test and found negative, slaughtered, or quarantined so that no foci of brucellosis in any species of domestic livestock are left uncontrolled. The following are the standards to maintain Class Free status.

(a) *Surveillance.* (1) *Testing requirements.* (i) *States or areas that have been Class Free for 5 consecutive years or longer and that do not have B. abortus in wildlife.* All recognized slaughtering establishments in the State or area, upon request by APHIS, must agree to participate in market cattle identification (MCI) testing as part of the national brucellosis surveillance plan.

(ii) *States or areas that have not been Class Free for 5 consecutive years or longer or that have B. abortus in wildlife.* The State or area must carry out testing as provided in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this definition:

(A) Brucellosis ring test. The State or area shall conduct as many brucellosis ring tests per year as are necessary to ensure that all herds producing milk for sale are tested at least twice per year at approximately 6-month intervals. Another official brucellosis milk test

may be used as approved by the Administrator.

(B) Market Cattle Identification (MCI) program. All recognized slaughtering establishments in the State or area must participate in the MCI program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test.

(2) *Brucellosis reactors.* All Class Free States or areas must comply with the following requirements upon detection of a brucellosis reactor:

(i) *Tracebacks.* The State or area must trace at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin.

(ii) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(A) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or

(B) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(1) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(2) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or

(3) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

(iii) *Epidemiologic surveillance.* (A) Adjacent herds. All adjacent herds or other herds having contact with cattle in a herd known to be affected shall be placed under quarantine and have an approved individual herd plan in effect within 15 days after notification of brucellosis in the herd known to be affected;

(B) Epidemiologically traced herds. All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall be placed under quarantine and have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Administrator.

(b) *Herd infection rate.* (1) *Affected herds.* Except as provided in paragraph (b)(4) of this definition, all cattle herds in the State or area must remain free of *Brucella abortus.*

(2) *Epidemiologic investigation.* Within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors have been found in any herd, State representatives or APHIS representatives shall investigate that herd to identify possible sources of brucellosis. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(3) *Approved herd plans.* All herds known to be affected shall have approved individual herd plans in effect within 15 days after notification by a State representative or APHIS representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Administrator.

(4) *Affected herd.* If any herd in a Class Free State or area is found to be affected with brucellosis, the State or area may retain its Class Free status if it meets the conditions of this paragraph; provided that the Administrator may reclassify a State or area to a lower status upon finding that continued detection of brucellosis presents a risk that the disease will spread.

(i) *The affected herd.* (A) The affected herd must be quarantined immediately, and, within 60 days, tested for brucellosis and depopulated; or

(B) The affected herd must be quarantined immediately and tested for brucellosis as required by the Administrator until there is no evidence of brucellosis in the herd; and

(ii) *Other herds.* An epidemiological investigation must be performed within 60 days of the detection of an infected animal in a herd. All herds on premises adjacent to the affected herd (adjacent herds), all herds from which animals may have been brought into the affected herd (source herds), and all herds that may have had contact with or accepted animals from the affected herd (contact herds) must be epidemiologically investigated, and each of those herds must be placed under an approved individual herd plan. If the investigating epidemiologist determines that a herd blood test for a particular adjacent herd, source herd, or contact herd is not warranted, the epidemiologist must include that determination, and the reasons supporting it, in the individual herd plan.

(iii) *APHIS review.* After the close of the 60-day period following the date an animal in the herd is determined to be infected, APHIS will conduct a review to confirm that the requirements of paragraphs (b)(4)(i) and (b)(4)(ii) of this definition have been satisfied and that the State or area is in compliance with all other applicable provisions.

(c) *Brucellosis management plans.* (1) Any State in which the Administrator has determined wildlife are infected with *B. abortus* must develop and implement a brucellosis management plan approved by the Administrator. The existence of *B. abortus* in wildlife will be determined by the Administrator, based on, but not limited to, histopathology, testing data, or epidemiology. The Administrator may also require a Class Free State or area to develop and implement a brucellosis management plan under any other circumstances if the Administrator determines it is necessary to prevent the spread of brucellosis. The State must sign a memorandum of understanding (MOU) with the Administrator that describes its brucellosis management plan. The MOU must be updated annually. The Administrator may reclassify to a lower status any State or area that has not implemented an approved brucellosis management plan within 6 months of being required to develop one.

(2) The brucellosis management plan reflected in the MOU must:

(i) Define and explain the basis for the geographic area in which a disease risk exists from *B. abortus* and to which the brucellosis management plan activities apply;

(ii) Describe epidemiologic assessment and surveillance activities to identify occurrence of *B. abortus* in

domestic livestock and wildlife and potential risks for spread of disease; and

(iii) Describe mitigation activities to prevent the spread of *B. abortus* from domestic livestock and/or wildlife, as applicable, within or from the brucellosis management area.

* * * * *

Herd blood test. A blood test for brucellosis conducted in a herd on all cattle or bison 6 months of age or over, except steers and spayed heifers.

* * * * *

Done in Washington, DC, this *17th* day of *December 2010*.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32371 Filed 12–22–10; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1281

RIN 2590–AA16

Federal Home Loan Bank Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1205 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 10C(a) that requires the Director of the Federal Housing Finance Agency (FHFA) to establish housing goals with respect to the Federal Home Loan Banks' (Banks) purchase of mortgages, if any. Section 10C(b) provides that the Banks' housing goals are to be consistent with the housing goals established by FHFA for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) under sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by HERA, taking into consideration the unique mission and ownership structure of the Banks.

To implement section 10C, FHFA is adopting a final rule that is substantially the same as the proposed rule published by FHFA for notice and comment. The final rule establishes three single-family owner-occupied purchase money mortgage goals and one single-family refinancing mortgage goal applicable to the Banks' purchases of single-family owner-occupied mortgages, if any, under their Acquired Member Assets (AMA) programs, consistent with the single-family housing goals for the Enterprises. A Bank will be subject to the housing goals if its AMA-approved mortgage purchases in a given year exceed a volume threshold of $2.5 billion.

DATES: This rule is effective January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Doherty, Acting Senior Associate Director, (202) 408–2991, Charles E. McLean, Associate Director, (202) 408–2537, or Rafe R. Ellison, Senior Program Analyst, (202) 408–2968, Office of Housing and Community Investment, 1625 Eye Street, NW., Washington, DC 20006. (These are not toll-free numbers.) For legal matters, contact Kevin Sheehan, Attorney, (202) 414–8952, or Sharon Like, Managing Associate General Counsel, (202) 414–8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. (These are not toll-free numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Home Loan Bank System

The Federal Home Loan Bank System (System) was created by the Bank Act to support mortgage lending and related community investment. *See* 12 U.S.C. 1421 *et seq.* The System is composed of 12 Banks with more than 8,000 member financial institutions, and the System's fiscal agent, the Office of Finance. The Banks fulfill their statutory mission primarily by providing secured loans (called advances) to their members. The Bank Act provides the Banks explicit authority to make secured advances. 12 U.S.C. 1430(a). Advances provide members with a source of funding for mortgages and asset-liability management, liquidity for a member's short-term needs, and additional funds for housing finance and community investment. Advances are collateralized primarily by residential mortgage loans and government and agency securities. 12 U.S.C. 1430(a)(3). Community financial institutions (CFIs) (*i.e.,* members with average total assets of less than $1 billion (as adjusted annually for inflation)) may also pledge small business, small agriculture or community development loans as collateral for advances. 12 U.S.C. 1430(a)(3)(E).

Consolidated obligations, consisting of bonds and discount notes, are the principal source for the Banks to fund advances and investments. The Office of Finance issues all consolidated obligations on behalf of the 12 Banks. Although each Bank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal of, and interest on, all consolidated obligations. *See* 12 CFR 966.9.

B. Bank AMA Programs

In July 2000, the Federal Housing Finance Board (FHFB) adopted a final regulation authorizing the Banks to establish Acquired Member Assets (AMA) programs. *See* 12 CFR part 955. A Bank may participate in an AMA program at its discretion; FHFA does not have the authority to compel a Bank to engage in any mortgage purchase activities. Each Bank must receive approval from FHFA pursuant to the requirements for new business activities in order to establish an AMA program. *See* 12 CFR part 980. A majority of the Banks have implemented AMA programs pursuant to the AMA approval authority.

In order for a Bank to acquire a mortgage loan under an AMA program, the loan must meet the requirements set forth under a three-part test established by the regulation. The three-part test consists of: A loan type requirement; a member or housing associate nexus requirement; and a credit risk-sharing requirement. 12 CFR 955.2. The AMA regulation generally authorizes the Banks to purchase conforming whole loans on single-family residential real property not more than 90 days delinquent. In addition, the Banks are authorized to purchase conforming whole loans on single-family residential real property regardless of delinquency status if the loan is insured or guaranteed by the U.S. government, although such loans are not eligible to be counted toward the Enterprises' housing goals, as provided in the Safety and Soundness Act.[1] The Banks acquire AMA from their participating members

[1] *See* 12 U.S.C. 4562. For that reason, consistent with the proposed rule, the final rule provides that such loans are not eligible to be counted toward the Banks' housing goals either. The AMA regulation also authorizes the Banks to purchase other real estate-related collateral, including: second liens and commercial real estate loans; small business, small farm and small agri-business loans; whole loans secured by manufactured housing regardless of whether the housing qualifies as residential real property; and state and local housing finance agency bonds, subject to prior new business activity approval by FHFA under 12 CFR part 980. *See* 12 CFR 955.2(a).

through either a purchase or funding transaction. The Banks are not authorized under the AMA programs to securitize the mortgages they purchase.

To date, FHFA has approved two AMA programs—the Mortgage Partnership Finance (MPF) program and the Mortgage Purchase Program (MPP)—that authorize the Banks to purchase only eligible single-family, fixed-rate mortgages, including manufactured housing loans, from participating financial institution (PFI) members. The Banks are not approved to purchase any other types of mortgages under the AMA programs, including mortgages secured by multifamily properties. In operation, the Banks have limited their AMA programs to purchasing conforming, conventional and government-insured or -guaranteed fixed-rate whole first mortgages on single-family residential property with maturities ranging from 5 to 30 years. Banks have also purchased participations in AMA-approved loan pools after the original Bank acquired the loans. As of June 30, 2010, the combined value of the AMA mortgage loans in the 12 Banks' portfolios was $67 billion, representing approximately seven percent of the Banks' total combined assets. In contrast, the Banks' outstanding advances, their primary business line, totaled $540 billion as of June 30, 2010, representing 58 percent of the Banks' total combined assets.[2]

The MPF and MPP programs are designed such that the Banks manage the interest-rate risk and the PFI assumes a substantial portion of the risks associated with originating the mortgage, particularly the credit risk. The AMA regulation requires that PFIs provide credit enhancement to give the mortgages the Banks purchase the credit quality equivalent to an instrument rated at least investment grade (the fourth highest credit rating category or triple-B), although the approved AMA programs require PFIs to enhance the loans to the second highest investment grade (double-A). 12 CFR 955.3. The PFI may provide this credit enhancement through various means, such as establishing a risk account to cover losses in excess of a borrower's equity and primary mortgage insurance on mortgages purchased by a Bank, accepting direct liability to pay credit losses up to a specified amount, or entering into a contractual obligation to provide supplemental mortgage guaranty insurance.

As previously noted, advances remain the core business activity of the Banks and a principal means by which they fulfill their mission. Participation in an AMA program is elective. The acquisition of AMA has presented certain risk management challenges for some Banks. The AMA are long-term, fixed-rate loans, and the portfolio requires careful attention to interest rate risk management in order to match the duration of assets and liabilities and to adjust for loan prepayments. The Banks must also competitively price their product in the market without eroding their own financial interest. Given these challenges and in light of recent interest rate and earnings volatility, several Banks have scaled down their purchases of AMA and returned to their core products. After peaking in 2003, when the Banks purchased over $91.2 billion in AMA, annual AMA purchases have steadily declined to an annualized average of about $6.7 billion during the period between 2006 and 2009. Several Banks either have stopped accepting additional master commitments to purchase AMA from their members or no longer accept delivery. In 2007, 2008 and 2009, the principal pay-down and maturities of AMA held for portfolio were greater than purchases and funding of new loans held for portfolio.[3]

C. Bank Housing Goals Statutory Provisions

Section 10C(a) of the Bank Act, as amended by HERA, requires the Director of FHFA to "establish housing goals with respect to the purchase of mortgages, if any, by the [Banks]," which "shall be consistent with the goals established under sections 1331 through 1334 of the [Safety and Soundness Act, as amended]." 12 U.S.C. 1430c(a). Section 10C(b) provides that, in establishing the goals for the Banks, "the Director shall consider the unique mission and ownership structure of the [Banks]." 12 U.S.C. 1430c(b). In addition, section 10C(c) provides that, "to facilitate an orderly transition," the Director shall establish interim target goals for the purchase of mortgages by the Banks for the calendar years 2009 and 2010. 12 U.S.C. 1430c(c). Section 10C(d) provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. 12 U.S.C. 1430c(d). Section 10C(e) requires the Director to annually report to Congress on the performance of the Banks in meeting the housing goals under section 10C. 12 U.S.C. 1430c(e).

Sections 1331 through 1333 of the Safety and Soundness Act, as amended by HERA, require the Director of FHFA to establish new housing goals effective for 2010 and beyond for the Enterprises. The new Enterprise housing goals include four goals for conventional conforming single-family owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal. *See* 12 U.S.C. 4561, 4563(a)(2). The single-family housing goals target purchase money mortgages for low-income families,[4] families that reside in low-income areas,[5] and very low-income families,[6] and refinancing mortgages for low-income families. *See* 12 U.S.C. 4562. The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families. *See* 12 U.S.C. 4563. In a separate rulemaking, FHFA has published in the **Federal Register** a final rule for the new housing goals for the Enterprises for 2010 and 2011 pursuant to the requirements of sections 1331 through 1333 of the Safety and Soundness Act, as amended. 75 FR 55892 (Sept. 14, 2010).

D. Banks' and Enterprises' Differences

Section 1313 of the Safety and Soundness Act, as amended, 12 U.S.C. 4513(f), requires the Director of FHFA to consider the differences between the Banks and the Enterprises whenever promulgating regulations that affect the Banks. In preparing the final rule, pursuant to section 1313, the Director considered the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability, and determined that the final rule is appropriate. As described below, there are significant differences between the Enterprise housing goals and the Bank housing goals—including

[2] *See* "Federal Home Loan Banks Second Quarter 2010 Combined Financial Report, Combined Statement of Condition," at 4.

[3] *See* "Federal Home Loan Banks Combined Financial Report for 2008" at 78–80, and "Federal Home Loan Banks Combined Financial Report for 2009" at 55–56.

[4] "Low-income" is defined as income not in excess of 80 percent of area median income. *See* 12 U.S.C. 4502(14).

[5] "Families in low-income areas" is defined to include families living in census tracts where the median income does not exceed 80 percent of the area median income and families with incomes not in excess of the area median income that either live in a minority census tract or in a designated disaster area. *See* 12 U.S.C. 4502(28).

[6] "Very low-income" is defined as income not in excess of 50 percent of area median income. *See* 12 U.S.C. 4502(24).

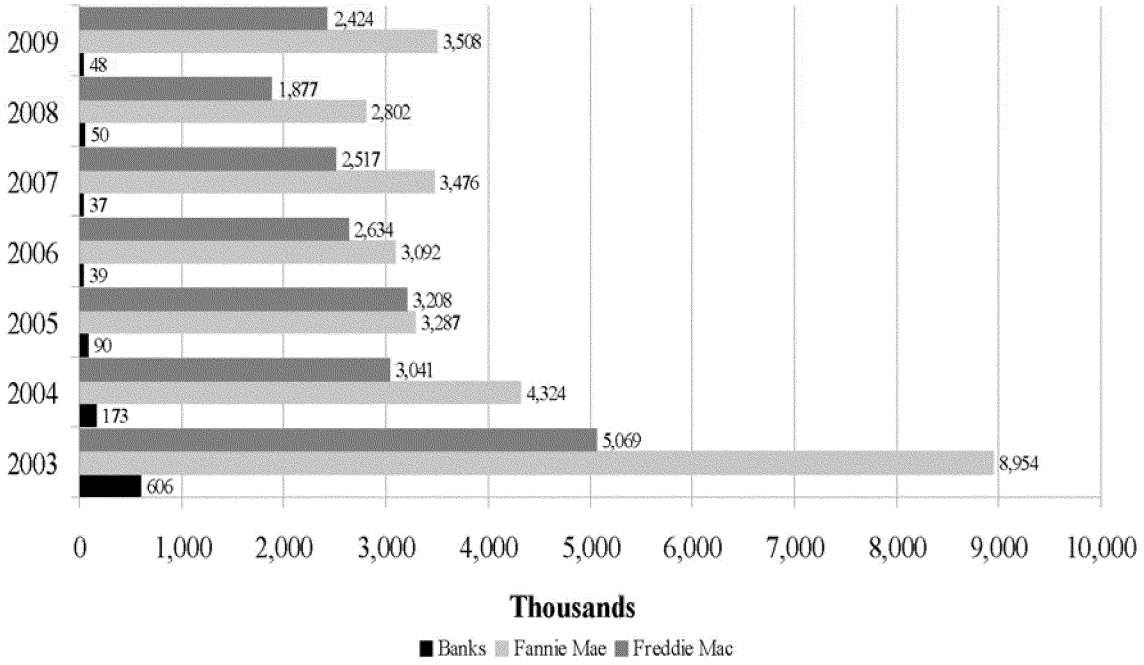
establishing a volume threshold for the Banks to avoid adverse impact on Bank AMA programs, particularly with respect to CFIs that are PFIs—that recognize the significant differences between the Banks' businesses and purposes and those of the Enterprises.

Each Bank is a cooperative owned by financial institution members that act as both owners and customers of the cooperative. Members, as owners, are entitled to receive shares of the cooperative's earnings and access to the cooperative's products and services, including the AMA programs. A Bank is authorized to serve only members of its cooperative, and, as discussed above, its primary business is providing advances to its members.

Fannie Mae and Freddie Mac have been owned by investors through their holdings of preferred or common stock shares since 1968 and 1989, respectively. An Enterprise's primary business is securitizing mortgages originated by financial institutions, and guaranteeing the timely payment of principal and interest on the mortgage-backed securities (MBS). The Enterprises also purchase mortgages for their mortgage portfolios. FHFA has instructed the Enterprises to significantly reduce the size of their mortgage portfolios over time. The Banks are restricted to purchasing loans from their members, most of which are regulated depositories. By contrast, the Enterprises have access to a broad, nationwide network of financial institutions from which they purchase mortgages. Also, unlike the Banks, for which participation in the AMA is an elective activity, the fundamental statutory purpose of the Enterprises is to bring stability in the secondary market for residential mortgages by purchasing and making commitments to purchase residential mortgages. *See* 12 U.S.C. 1451 note; 12 U.S.C. 1716.

The Banks' and Enterprises' different ownership structures and associated statutory restrictions in the Bank Act and the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), respectively, have a significant impact on their respective mortgage purchase activities. The Enterprises' mortgage purchase activities are substantially greater than that of the Banks. In calendar year 2009, the Banks' combined number of single-family mortgage purchases was slightly over 48,000, while Fannie Mae purchased approximately 3.51 million single-family mortgages and Freddie Mac purchased approximately 2.42 million single-family mortgages. The disparity between the Banks' and Enterprises' mortgage purchase businesses was great even during the peak years of the AMA programs. In 2003, the Banks purchased approximately 606,000 single-family mortgages, which was only 4.3 percent of the approximately 14.02 million single-family mortgages purchased by the Enterprises in that year (*see* Figure 1).

Figure 1. The Banks' and the Enterprises' Mortgage Purchase Activity



Note: The source for the Banks' mortgage purchase activity data was the FHFA's AMA database.
The sources for the Enterprises' mortgage purchase activity data were the 2003 through 2009 Annual Housing Activities Report tables. The data include all single family mortgages purchased by the Enterprises.

II. Proposed Rule

On May 28, 2010, FHFA published in the **Federal Register** a proposed rule to establish new housing goals for the Banks. The 45-day comment period closed July 12, 2010. *See* 75 FR 29947 (May 28, 2010). FHFA received a total of 9 comment letters on the proposed rule. Five of the comment letters were from Banks, one was from a not-for-profit organization, two were from trade

associations, and one was from a corporation.

FHFA has considered all of the comments on the proposed rule and has determined to adopt a final rule that is substantially the same as the proposed rule. The comments are discussed below in the Analysis of Final Rule section. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but may be considered by FHFA at a future date.

III. Applicability of Bank Housing Goals to 2011 and Beyond

HERA requires FHFA to establish 2009 and 2010 interim target housing goals for the Banks that facilitate an orderly transition and are consistent with those of the Enterprises. In order to facilitate an orderly transition, the final rule establishes housing goals for 2011 and beyond. The Banks' unique ownership structure and mission is such that FHFA needed to add criteria to the Bank housing goals that are not necessary for those of the Enterprises, and FHFA required additional time to develop those criteria. The Banks' administrative and monitoring challenges will be reduced by enabling the Banks to establish policies and procedures to meet the housing goals requirements with the knowledge that these requirements will not be changed the following year. FHFA believes this approach will facilitate an orderly transition to housing goals.

IV. Summary of Final Rule

A. Market-Based Housing Goals

Consistent with the proposed rule, the final rule establishes market-based single-family housing goals for the Banks in a manner largely consistent with the market-based single-family housing goals for the Enterprises. Separate goals are established for AMA-approved mortgages on owner-occupied single-family housing. The goals for purchase money mortgages separately measure performance on purchase money mortgages for low-income families, for families in low-income areas, and for very low-income families. The goal for refinancing mortgages measures performance on refinancing mortgages for low-income families.

The final rule does not establish benchmark levels to measure the Banks' housing goals performance. The Banks' performance under the housing goals will be measured relative to the *actual* goals-qualifying shares of the district-level primary mortgage market during the year in their districts. FHFA will calculate the actual goals-qualifying shares of the market using all mortgages originated in the geographic boundaries of each Bank district (meaning that the properties securing the mortgages are located in the district), including mortgages originated both by members and non-members.

A Bank meets a housing goal if its annual performance meets or exceeds the actual share of the market in that district that fits the criteria for a particular housing goal for that year. A Bank fails to meet a housing goal if it falls short of the actual market share for that goal in that year. All mortgages purchased by a Bank that meet the requirements of the final rule will count toward the Bank's goal performance, regardless of where the properties securing the mortgages are located, but the market share against which the Bank's performance will be evaluated will be the market share of mortgages secured by properties located in the district, as described above. The housing goals do not apply to an individual Bank unless it has exceeded the $2.5 billion volume threshold.

B. Volume Threshold

Consistent with the proposed rule, the final rule establishes a dollar volume threshold of $2.5 billion that a Bank's total unpaid principal balance (UPB) of AMA-approved mortgage purchases in a given year must exceed before the Bank is subject to the housing goals. The volume threshold recognizes the Banks' unique mission and ownership structure and the current status of the AMA programs, specifically, their mission to provide liquidity to their members.

V. Analysis of Final Rule

A. Definitions—§ 1281.1

The final rule sets forth definitions applicable to the Bank housing goals provisions. A number of the definitions are the same as those applicable to the Enterprise housing goals, and other definitions were modified to reflect their applicability to the Banks' AMA programs.

"*Designated disaster area.*" The definition of "families in low-income areas" includes families with incomes at or below 100 percent of area median income (AMI) who reside in "designated disaster areas." The final rule defines "designated disaster area" as any census tract that is located in a county designated by the Federal Government as adversely affected by a declared major disaster administered by the Federal Emergency Management Agency (FEMA), where individual assistance payments were authorized by FEMA. In order to remain consistent with the revised definition in the final 2010–2011 Enterprise housing goals rule, the final Bank housing goals rule definition does not include the proposed requirement that average damage severity, as reported by FEMA, exceed $1,000 per household in a census tract.

Disaster areas are declared when an area is adversely affected by some unforeseen event. However, not all disasters impact housing to the same degree, and the severity of the impact varies within the declared area. Presidential Major Disaster Declarations are defined by FEMA at the county level in the area affected by the major disaster and can be declared to be eligible for public assistance, individual assistance, or both. Public assistance is available to local governments for the repair, replacement, or clean-up of public infrastructure. Individual assistance is broken down further into two categories, housing needs and "other than housing needs."[7] Housing needs include repair, replacement, and construction of homeowner residences. Consistent with the proposed rule and with the Community Reinvestment Act (CRA), the final rule limits the definition of "designated disaster areas" to those counties eligible for individual assistance.

For purposes of complying with CRA, regulators have made the determination that "[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended."[8] To accommodate the Banks' business planning requirements, for purposes of the low-income areas housing goal, the final rule, consistent with the proposed rule, will treat a designated disaster area as effective beginning on the January 1 after the FEMA designation of the county and continuing through December 31 of the third full calendar year following the FEMA designation. If data are available in a particular case to support treatment as a designated disaster area from an earlier date or for a longer period of

[7] Federally declared disaster areas are managed by FEMA and can be tracked at FEMA's Web site. *See http://www.fema.gov/news/disasters.fema.*

[8] The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice,* 74 FR 498, 509 (Jan. 6, 2009).

time, FHFA may provide for such treatment by notice to the Banks.

"*Families in low-income areas.*" Consistent with the proposed rule, the definition of "families in low-income areas" in the final rule includes families with incomes at or below 100 percent of AMI who reside in "minority census tracts," which is defined by the Safety and Soundness Act to mean a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI. 12 U.S.C. 4502(29). In addition, the definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas."

"*Mortgage.*" Consistent with the proposed rule and the final Enterprise 2010–2011 housing goals rule, the definition of "mortgage" in the final rule does not include personal property manufactured housing loans. Therefore, any purchases of personal property manufactured housing loans will not qualify for credit under the Bank housing goals.

"*Mortgage purchase.*" Consistent with the proposed rule, the final rule defines "mortgage purchase" as a transaction in which a Bank bought or otherwise acquired a mortgage. The Banks commented that the phrase "otherwise acquired a mortgage" is overly broad and could be read to include the Banks' Affordable Housing Program (AHP) and collateral received from members. The Banks requested that FHFA clarify the definition to mean a transaction in which a Bank bought or otherwise acquired a mortgage pursuant to the Bank's authority under the AMA regulation. The final rule does not limit the definition of "mortgage purchase" to mean only purchases of AMA-approved mortgages, because the types of mortgage purchases that are covered by the Bank housing goals are set out in § 1281.11. That section provides that the Bank housing goals are limited to purchases of AMA-approved mortgages.

"*Refinancing mortgage.*" Consistent with the final Enterprise 2010–2011 housing goals rule, the definition of "refinancing mortgage" in the final Bank housing goals rule provides that changes to a loan as a result of a workout agreement generally will not be treated as a separate refinancing mortgage. The proposed Bank housing goals rule did not address workout agreements in the definition "refinancing mortgage," but the provision is included in the final rule to maintain consistency with the long-standing definition of "refinancing" under the Enterprise housing goals.

B. Housing Goals—Proposed §§ 1281.10 and 1281.11

General. Consistent with the proposed rule, § 1281.10 of the final rule provides an overview of the contents of this subpart. FHFA will evaluate Bank performance under the housing goals established for 2010 on a calendar year basis.

Volume Threshold. Consistent with the proposed rule, § 1281.11(a) of the final rule establishes a volume threshold that will trigger application of the housing goals to a Bank. Specifically, a Bank that in a calendar year purchased AMA-approved mortgages with a total UPB greater than $2.5 billion will be subject to the housing goals for that year, a threshold that FHFA selected as one which would result in goals being applied to substantial AMA programs, of a size that a number of Banks have operated in the past, while enabling small programs, which might serve as mortgage sales outlets for CFIs, to operate without compliance burdens that might cause them to be abandoned. To illustrate the magnitude of this volume threshold, it is currently equal to approximately 0.25 percent of the overall single-family market, which equaled $986 billion (approximately $1.0 trillion). (FHFA arrived at this estimate of the size of the market by using 2008 HMDA mortgage origination data to calculate the total UPB of conforming, first lien mortgages originated in 2008 that were secured by owner-occupied, single-family residences. Mortgages for home improvement and Home Ownership and Equity Protection Act (HOEPA) mortgages were excluded to be consistent with the market estimate approach for the Enterprise housing goals.) Looking at this threshold another way, assuming that the average UPB of the mortgages a Bank purchases equals $200,000, a Bank would need to purchase only 12,500 mortgages in a given year to meet the volume threshold. In FHFA's view, below this threshold it would be challenging for Banks to ensure that the small numbers of AMA mortgages purchased—in transactions that the Banks do not themselves initiate—are representative of the market and include sufficient affordable mortgages to meet housing goals.

FHFA requested comment on whether a volume threshold should apply, whether the proposed volume threshold of $2.5 billion is appropriate, whether a higher or lower threshold should apply, and whether the volume threshold alternatives discussed in the proposed rule or any other alternatives might be used. The Banks recommended establishing a volume threshold at $5.0 billion, or on a sliding scale up to $5 billion, if the Bank met specified qualitative factors that serve the Banks' housing mission, such as a Bank's purchase of Federal Housing Administration (FHA) or U.S. Department of Veterans Affairs (VA) mortgages and its use of Bank AHP funds in conjunction with AMA mortgage purchases. The Banks stated that applying a higher threshold to Banks that met such qualitative measures would encourage the Banks to be accountable to their housing mission. The Banks also recommended that mortgages purchased from CFIs be excluded when determining whether a Bank exceeded the volume threshold. Finally, the Banks commented that because a Bank may not know until the fourth quarter whether it will exceed the volume threshold that year, the housing goals should apply to a Bank only in the year following the year for which the Bank exceeded the volume threshold.

A trade association recommended establishing a volume threshold of 6,000 AMA-approved mortgages purchased annually. Assuming that the average UPB of the mortgages a Bank purchases equals $200,000, the volume threshold would be equivalent to $1.2 billion. A not-for-profit organization recommended that there be no volume threshold.

FHFA has considered the comments on the proposed $2.5 billion volume threshold and concluded that this volume threshold will adequately balance the Banks' missions to support affordable housing and to provide liquidity to CFIs. The volume threshold is intended in part to ensure that Banks with significant AMA volume in any year are subject to the housing goals. For that reason, the Bank housing goals will apply in the same calendar year for which a Bank exceeded the volume threshold. In determining whether the proposed $2.5 billion is an appropriate level for the volume threshold, FHFA considered the volume of mortgages purchased by the Banks over the past decade. From 2002 to 2004, when the Banks had their largest presence in the national market, a number of Banks had annual volumes of AMA-approved mortgages greater than $2.5 billion: seven Banks in 2002, eight Banks in 2003 and four Banks in 2004. A significant percentage of Banks' annual volume of AMA-approved mortgage purchases exceeded $5.0 billion in 2002 and 2003: four Banks in 2002 and seven Banks in 2003. Annual volumes of AMA-approved mortgages were significantly lower from 2005 to 2009.

Although a few Banks had annual volumes exceeding $2.5 billion during that period, none of the Banks exceeded an annual volume of $5.0 billion. (*See* Table 1.)

Based on this analysis of the volume of the Banks' AMA-approved mortgage purchases, a volume threshold of $2.5 billion is mid-way between the higher volume threshold of $5.0 billion and housing goals that would apply without regard to the volume of mortgages purchased by the Bank. Increasing the volume threshold above $2.5 billion would unnecessarily reduce the likelihood that a Bank would be subject to housing goals in the future and would not meet the intent of Congress that the Banks be subject to housing goals, as reflected in HERA.

Table 1

Banks' AMA Mortgages Purchased
Total Unpaid Principal Balance by Year
(Dollars in Millions)

Bank	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Boston	$32	$644	$3,123	$9,912	$4,091	$3,415	$371	$174	$620	$328
New York	$571	$131	$268	$539	$707	$450	$184	$176	$138	$147
Pittsburgh	$3,643	$6,448	$10,959	$14,306	$3,769	$1,222	$473	$131	$515	$414
Atlanta	$267	$449	$514	$1,798	$912	$1,014	$503	$914	$163	$0
Cincinnati	$0	$556	$3,683	$7,586	$3,546	$1,748	$1,160	$1,509	$1,027	$3,239
Indianapolis	$82	$371	$5,539	$4,780	$1,905	$3,325	$1,636	$468	$496	$564
Chicago	$767	$3,406	$5,824	$16,915	$4,991	$1,842	$1,129	$1,355	$2,684	$43
Des Moines	$6,469	$3,519	$4,997	$17,515	$1,907	$469	$361	$370	$1,065	$1,519
Dallas	$2,219	$2,024	$1,429	$1,938	$569	$332	$225	$179	$190	$0
Topeka	$11	$200	$266	$808	$1,058	$326	$228	$254	$764	$1,159
San Francisco	$0	$0	$522	$8,497	$532	$72	$18	$0	$0	$0
Seattle	$418	$1,489	$8,005	$6,651	$1,561	$86	$0	$0	$0	$0
System	**$14,479**	**$19,236**	**$45,128**	**$91,245**	**$25,549**	**$14,300**	**$6,289**	**$5,530**	**$7,663**	**$7,413**

The volume threshold is also intended to ensure that Banks with a relatively low annual volume of purchases of AMA-approved mortgages, *i.e.,* $2.5 billion or less, can continue to serve CFIs without being subject to the housing goals. Several Banks offer their AMA programs as a service to CFIs, which is consistent with their mission to provide liquidity to their members. FHFA set the volume threshold at an amount that would ensure that the housing goals would not cause the Banks that offer AMA programs primarily to service CFIs to discontinue their programs. The AMA programs are an important source of liquidity for such CFIs, and the discontinuance of an AMA program could adversely impact CFIs, such as those in rural areas, that may have limited or no access to the secondary market because of the higher per-mortgage sales cost associated with delivering a relatively small number of mortgages to purchasers, or the inability of these CFIs to meet purchasers' mortgage servicing requirements. Because the volume threshold already limits the impact of the housing goals on a Bank with an AMA program focused on its small members, the final rule does not exclude mortgages purchased from CFIs from counting for purposes of the volume threshold.

Market-Based Housing Goals. Consistent with the proposed rule, § 1281.11(b) of the final rule provides that compliance with the housing goals will be measured by comparing a Bank's performance with the *actual* goals-qualifying shares of the primary market during the year in the Bank's district. Under this retrospective, market-based approach, FHFA will calculate the actual goals-qualifying shares of the district-level primary mortgage market during the year using all mortgages originated in the geographic boundaries of each Bank district (meaning that the properties securing the mortgages are located in the district), including mortgages originated both by members and non-members. The Enterprise housing goals rule includes both this market-based approach and specific benchmark housing goal levels for the Enterprises. Under the Bank housing goals rule, a Bank's performance will not be measured against specific benchmark levels. Several provisions in the Enterprise housing goals rule that relate to the benchmark housing goal levels have been omitted from the Bank housing goals rule as unnecessary in light of the retrospective, market-based approach.

As noted in the proposed rule, FHFA believes that the advantages of comparing the Bank's performance to actual market performance outweigh the disadvantages. A more detailed discussion of the market-based approach is included in the final Enterprise 2010–2011 housing goals rule. *See* 75 FR at 55896–55898. The market size analysis used to establish the benchmark levels for the Enterprise housing goals does not reflect differences between the various Bank districts. The difficulties in accurately predicting the size of the market for each housing goal in each Bank district make it impractical to set meaningful annual benchmark levels for each Bank.

A disadvantage of the market-based approach is that public information on the goal-qualifying shares of the single-family primary mortgage market is not available until the release of Home Mortgage Disclosure Act (HMDA) data in late summer of the following year. However, a Bank that is subject to the housing goals will be active in the mortgage market in its district and hence positioned to understand how its performance is likely to compare to the overall market in its district.

In the proposed rule, FHFA discussed other possible alternatives for measuring market size that had been considered and rejected. The Banks recommended using a market measurement that is limited to mortgages that are similar to the types of mortgages a Bank might purchase under its AMA program, namely, prime, fixed rate, fully amortizing mortgage loans that are originated by regulated depository institutions in the member's district and that are intended for sale in the secondary market. However, FHFA has determined that a more inclusive measurement of the market will provide a better basis for evaluating the extent

to which a Bank's purchases under its AMA program address mortgage credit needs in the Bank's district.

The Banks also recommended that mortgages purchased from CFIs be excluded from consideration under the Bank housing goals because such mortgages are not represented in the HMDA data used to measure the size of the market. The Banks recommended that such loans also be excluded when determining whether a Bank exceeded the volume threshold and when measuring a Bank's actual performance under the housing goals. The final rule does not exclude mortgages purchased from CFIs from consideration under the housing goals. As discussed above, the volume threshold already limits the impact of the housing goals on a Bank with an AMA program focused on its small members. In addition, removing all mortgages purchased from CFIs from consideration under the housing goals would lead to an inaccurate measure of the extent to which a Bank's purchases of AMA-approved mortgages meet the housing goals.

Consistent with the proposed rule, the final rule does not establish benchmark levels to measure the Banks' performance under the housing goals. FHFA requested comment on whether it would be appropriate to establish benchmark levels as a means of measuring the Banks' housing goals performance, in addition to measuring performance based on a Bank's actual share of goal-qualifying mortgages relative to its district-level market share, and if so, whether it would be appropriate to set benchmark levels for the Bank housing goals equal to the benchmark levels for the Enterprise housing goals. The comments did not specifically address establishing benchmark levels for the Banks, although a trade association suggested that the Banks should be encouraged to exceed the market share.

FHFA has concluded that it would be inappropriate to set benchmark levels for the Banks equal to the benchmark levels for the corresponding Enterprise housing goals, because the Enterprise benchmarks are based on national mortgage market estimates and no Bank has an AMA program with a national scope. In addition, FHFA has concluded that setting benchmark levels based on district-level market size estimates would be inappropriate because the market sizes cannot be reliably estimated in advance.

Section 1281.11(b) establishes criteria for determining the size of the market for each Bank district based on HMDA data on mortgages secured by property located in that Bank district. The criteria for establishing the size of the market reflect the types of mortgages that will count for purposes of the housing goals and that are typically eligible for purchase by a Bank. The criteria are the same as those in the proposed rule except for the definition of higher-priced loan to be used in the measurement of market size. The proposed rule would have excluded from the measurement of the market any mortgages with rate spreads of 300 basis points or more above the applicable Average Prime Offer Rate (APOR) reported under HMDA. Consistent with the definition in the final Enterprise 2010–2011 housing goals rule, for purposes of measuring the market for each Bank district, mortgages with rate spreads of 150 basis points above the applicable APOR reported under HMDA will be excluded. The 150 basis point rate spread is consistent with the definition of higher-priced loan used by the Federal Reserve Board.

Bank Housing Goals. Consistent with the proposed rule, § 1281.11(c) through 1281.11(f) of the final rule establishes four single-family housing goals applicable to any Bank that exceeds the volume threshold in a particular year. Goals are established for purchase money mortgages for low-income families, for families in low-income areas, and for very low-income families. In addition, a goal is established for refinancing mortgages for low-income families. The single-family housing goals will be based on an evaluation of the Bank's performance relative to the market for each housing goal in each year. The Banks have not been approved to purchase multifamily loans under the AMA programs. Accordingly, unlike the new Enterprise housing goals, the Bank housing goals do not include a multifamily special affordable housing goal or multifamily special affordable housing subgoal.

Two commenters recommended expanding the coverage of the Bank housing goals beyond the scope of the Enterprise housing goals. A not-for-profit organization recommended that FHFA give Bank housing goals credit for rental units in single-family properties, stating that such units provide an important source of affordable housing. A trade association suggested that FHFA consider adding a neighborhood goal for refinance lending, in addition to the borrower goal. In order to remain consistent with the Enterprise housing goals, the final rule does not alter the basic structure of the proposed Bank housing goals. The Bank housing goals do not include any investor-owned single-family properties, and they do not provide additional credit for any rental units in owner-occupied single-family properties. The Bank housing goals also do not include a separate goal for refinancing mortgages in low-income areas.

In contrast to the new Enterprise housing goals, the Bank housing goals also do not include a low-income areas subgoal. Because the Bank housing goals do not include benchmark levels set prospectively, there is no need for a separate subgoal to address the unpredictable impact designated disaster areas may have from year to year.

C. General Counting Requirements—§ 1281.12

Consistent with the proposed rule, § 1281.12 of the final rule sets forth general requirements for the counting of Bank AMA-approved mortgage purchases toward the achievement of the housing goals. Performance under the housing goals will be evaluated based on the percentage of all AMA-approved mortgages on single-family, owner-occupied properties purchased by a Bank that meet a particular goal.

As proposed, § 1281.12(a) of the final rule provides that performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b). The numerator is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular housing goal. The denominator is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties.

As proposed, § 1281.12(b) of the final rule provides that when a Bank lacks sufficient data or information, *e.g.,* income of mortgagor, to determine whether the purchase of a mortgage counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, but may not be included in the numerator. The Banks may not use missing data estimation methodologies, as used by the Enterprises, in light of the complexity of developing an estimation methodology suitable for the Banks. FHFA invited comment on whether a method for estimating missing affordability data would be feasible for

the Bank housing goals but did not receive comments on this issue.

The provisions in § 1281.12(c) through (f), which address credit toward multiple goals, application of median income, sampling and newly available data, respectively, are consistent with the provisions in the proposed rule and the final Enterprise 2010–2011 housing goals rule.

The MPF program allows Banks to purchase a percentage of a mortgage or mortgage pool initially acquired by another Bank under the program. As discussed in the proposed rule, for purposes of receiving credit under one of the housing goals, each mortgage will be assigned to the Bank that initially acquired the mortgage regardless of whether an interest in the mortgage was later sold to another Bank.

In September 2008, FHFA approved the Chicago Bank's request to establish the MPF Xtra program, under which the Bank would buy certain qualified, conforming mortgages from eligible members for immediate sale to Fannie Mae. As discussed in the proposed rule, the MPF Xtra program is not an AMA program authorized under 12 CFR part 955.[9] Under the MPF Xtra program, the Bank serves essentially as a conduit or intermediary with respect to the sale of the mortgages to Fannie Mae. The mortgages may be counted by Fannie Mae toward compliance with its housing goals. If the mortgages were also to be considered for purposes of the Bank housing goals, double-counting of the mortgages could occur. Avoiding double-counting of mortgage purchases is consistent with the Enterprise housing goals. An Enterprise cannot receive credit towards a housing goal for a mortgage purchase if the other Enterprise received credit for that mortgage. Additionally, under the Enterprise housing goals, credit towards a housing goal is only awarded for a mortgage where the Enterprise purchases the mortgage or assumes the credit risks associated with the mortgage. The Bank does not fund MPF Xtra mortgages or assume any credit risks in MPF Xtra transactions. For these reasons, under the final rule, mortgages purchased by a Bank pursuant to the MPF Xtra program will not be considered for purposes of the Bank housing goals.

D. Special Counting Requirements—§ 1281.13

Consistent with the proposed rule, § 1281.13 of the final rule sets forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals, a number of which are discussed further below.

Section 1281.13(b) specifies the types of transactions that shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under the housing goals. The intent of this section is to specify the counting treatment for transactions in which the Banks are authorized to engage under the approved AMA programs. The counting rules do not purport to authorize the purchase of any types of mortgages, but are intended solely to indicate whether such mortgages shall receive full, partial or no credit toward the housing goals. Accordingly, transactions in which the Banks are not authorized to engage under the approved AMA programs are not included in paragraph (b). The Bank counting rules differ in some respects from the counting rules for the Enterprise housing goals. For example, the Banks are not authorized to purchase private label securities (PLS) under the AMA programs; therefore it is not necessary to exclude PLS from counting under the Bank housing goals. On the other hand, while the Banks are authorized to purchase non-conventional loans under the AMA authority, such loans are excluded from counting under the Enterprise housing goals and, therefore, have been excluded from counting under the Bank housing goals as well.

Section 1281.13(b) of the final rule makes clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage shall be excluded even if it otherwise falls within one of the special counting rules in § 1281.13(c). For example, a non-conventional mortgage that would be excluded from consideration pursuant to § 1281.13(b)(1) cannot be counted even if it otherwise counts as a seasoned mortgage under § 1281.13(c)(2).

Home Equity Conversion Mortgages. Section 1281.13(b)(1) of the final rule excludes the purchases of all non-conventional single-family mortgages, including Home Equity Conversion Mortgages (HECMs), from counting towards the Banks' housing goals—that is, such purchases shall be excluded from both the numerator and denominator in calculating goal performance. This is consistent with the counting treatment for the new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only conventional mortgages. *See* 12 U.S.C. 4562(a).

Mortgages financing secondary residences. Section 1281.13(b)(6) of the final rule prohibits the counting of mortgage purchases to the extent they finance any dwelling units that are secondary residences. This is consistent with the counting treatment for the new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only purchases of owner-occupied mortgages. *See* 12 U.S.C. 4562.

Subordinate liens. Section 1281.13(b)(8) of the final rule excludes the purchases of subordinate lien mortgages (second mortgages) from counting towards the Banks' housing goals. HERA amended section 1331 of the Safety and Soundness Act to provide that the Enterprise single-family housing goals are limited to purchase money or refinancing mortgages. *See* 12 U.S.C. 4561. Consistent with the counting treatment for the new Enterprise housing goals, the Bank housing goals exclude home equity loans from counting for purposes of the housing goals. The Bank housing goals also exclude other subordinate lien mortgages, such as "piggy-back" loans that may be acquired by a Bank along with the corresponding first lien mortgage. Subordinate lien mortgages are excluded because it is difficult to determine whether such loans are purchase money loans or home equity loans, and because first lien mortgages provide a better measure of a Bank's support for residential housing.

Previously counted mortgages. Section 1281.13(b)(9) of the final rule prohibits the counting of mortgages toward performance under the housing goals if the mortgages have previously been counted for purposes of the performance of the Bank under the housing goals. In order to limit excessively burdensome recordkeeping that could result, the rule makes clear that this limitation only extends back for five years. Although the Banks have not previously been subject to housing goals, this language is included for applicability in future years.

Construction-to-permanent loans. Section 1281.13(b)(10) of the final rule

[9] In May 2007, FHFB also approved the Atlanta Bank's request to offer the Global Mortgage Alliance Program (GMAP), under which the Bank would facilitate the sale of certain qualified conforming mortgage loans from eligible members to another of its members—Global Mortgage Alliance, LLC, which would then securitize those loans. To date, no transactions have occurred under GMAP. The GMAP is not an AMA program authorized under part 955. Both the MPF Xtra and GMAP programs were separately authorized under the Banks' incidental authority contained in sections 11(a) and 11(e)(1) of the Bank Act. *See* 12 U.S.C. 1431(a), 1431(e)(1).

excludes purchases of mortgages secured by properties that have not been approved for occupancy from consideration for purposes of the housing goals.

Housing goals credit for certain transactions. Section 1281.13(c) of the final rule provides that certain types of transactions shall be counted for purposes of the housing goals, including mortgages on cooperative housing and condominium units, seasoned mortgages, and refinancing mortgages. Section 1281.13(c) does not include certain types of transactions that are eligible for housing goals credit under the Enterprise housing goals, including credit enhancements for goal-qualifying mortgages, entering into risk sharing agreements with federal agencies to finance qualifying mortgages, and purchasing mortgage revenue bonds backed by qualifying mortgages. Such transactions are not eligible for Bank housing goals credit because of the more limited scope of the approved AMA programs. Section 1281.13(c) makes clear that where a transaction falls under more than one of the special counting rules in § 1281.13(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the housing goals.

HOEPA mortgages and mortgages with unacceptable terms and conditions. Consistent with the proposed rule, § 1281.13(d) of the final rule provides that HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but may not be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria. This treatment is consistent with past practice for the Enterprises and with section 1332(i) of the Safety and Soundness Act, as amended by HERA, which provides that no credit may be given for mortgages that FHFA determines are "unacceptable or contrary to good lending practices." 12 U.S.C. 4562(i).

The proposed rule defined "mortgages with unacceptable terms or conditions" to include mortgages with excessive fees or interest rates, as well as mortgages with prepayment penalties, mortgages sold with prepaid single-premium credit life insurance products, and mortgages originated using practices that violate fair lending laws or that are contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by federal banking agencies.

A trade association commented that FHFA should strengthen the terms and conditions that constitute unacceptable mortgages, and recommended the use of Regulation Z and HOEPA rather than interagency guidance to determine whether a mortgage is eligible to be counted under the housing goals. The final rule does not change the proposed definition of "mortgages with unacceptable terms or conditions." While the final rule specifically references interagency guidance on subprime and nontraditional loans, FHFA expects the Banks to ensure that mortgage loans they acquire comply with Regulation Z and HOEPA, as well as any federal law related to minimum standards for mortgages and predatory lending. As markets and abusive practices evolve, FHFA may determine additional terms and conditions to be unacceptable.

FHFA guidance. Section 1281.13(e) of the final rule provides that FHFA may provide guidance on the treatment of any transactions under the housing goals. The guidance may be provided in response to a request from a Bank, or at the initiation of FHFA.

Private label securities. As discussed in the proposed rule, because FHFA is counting only mortgages purchased through AMA programs in determining each Bank's housing goal performance, and the Banks are not authorized to purchase PLS through these programs, PLS will not be counted in determining a Bank's housing goals performance.

Housing finance agency obligations and other transactions. Consistent with the proposed rule, the final rule provides that only mortgages purchased through AMA programs will count in determining each Bank's housing goal performance. A trade association commenter recommended giving the Banks housing goals credit for Bank advances and investments, including transactions such as the purchase of housing finance agency (HFA) bonds, investment in housing-related bonds and tax credits, and advances to HFAs. The final rule does not expand the types of transactions that will receive credit under the housing goals to include transactions, such as purchases of HFA obligations, that are not AMA-approved mortgage purchases. Expanding the types of Bank transactions subject to housing goals beyond AMA-approved mortgage purchases would impede the ability of the Banks to make an orderly transition to the housing goals, because it would entail the Banks collecting information they may not currently collect, and for some Banks, modifying their activities involving HFAs.

E. Housing Goals Enforcement—§§ 1281.14 and 1281.15

Consistent with the proposed rule, § 1281.14 of the final rule provides that the Director shall determine whether each Bank has exceeded the volume threshold on an annual basis. For any Bank that has exceeded the volume threshold, the Director will also determine whether the Bank has met the housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA. If the Director determines that a Bank has failed to meet any housing goal, the Director shall provide notice to the Bank in writing of such preliminary determination.

Consistent with the proposed rule, § 1281.15 of the final rule includes requirements for submission of a housing plan by a Bank for failure to meet any housing goal that is determined to be feasible by FHFA. The requirement to submit a housing plan is at the discretion of the Director.

F. Reporting Requirements—§§ 1281.20 Through 1281.23

As required for the Enterprises, and consistent with the proposed rule, §§ 1281.20 through 1281.23 of the final rule establish reporting requirements for the Banks with respect to their housing goals performance. Section 1281.21(a) requires the Banks to collect and compile computerized loan-level data on each AMA-approved mortgage purchased, as described in FHFA's Data Reporting Manual (DRM). These reporting requirements apply to each Bank, regardless of whether in a particular year the Bank expects to exceed the volume threshold and thus be subject to the housing goals.

Section 1281.21(b) requires each Bank to submit to the Director, on a semi-annual basis, a Mortgage Report containing aggregations of the loan-level mortgage data for year-to-date AMA-approved mortgage purchases, and year-to-date dollar volume, number of units, and number of AMA-approved mortgages on owner-occupied properties purchased that do, and do not, qualify under each housing goal. The loan-level data that must be reported are currently collected by FHFA on a semi-annual basis. As advances in technology have made more frequent submissions less burdensome, FHFA will consider quarterly reporting for the Banks in future years. Quarterly reporting would be consistent with the current requirements for the Enterprises. The additional data provided facilitates

FHFA's monitoring of Enterprise performance under the housing goals. The Enterprises are also required to submit Annual Housing Activities Reports (AHARs) to FHFA. The final rule does not require the Banks to submit AHARs, but FHFA will consider requiring such reports in the future.

Consistent with the proposed rule, § 1281.22 of the final rule requires each Bank to provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

As proposed, § 1281.23 of the final rule sets forth the data integrity process for Bank housing goals data. The final rule requires the senior officer of each Bank who is responsible for submitting any report, data or other information for which certification is requested by the Director, to certify such report, data or information. FHFA will determine on an annual basis the official housing goals performance figures for any Bank that is subject to the housing goals, and may resolve any error, omission or discrepancy by adjusting the Bank's official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year's goal performance.

FHFA will implement the data integrity process pursuant to its general regulatory authority over the Banks. FHFA expects that the Banks will work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA.

VI. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1281

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 1430c, FHFA amends chapter XII of title 12 of the Code of Federal Regulations, by adding new part 1281 to subchapter E to read as follows:

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

Sec.

Subpart A—General

1281.1 Definitions.

Subpart B—Housing Goals

1281.10 General.
1281.11 Bank housing goals.
1281.12 General counting requirements.
1281.13 Special counting requirements.
1281.14 Determination of compliance with housing goals; notice of determination.
1281.15 Housing plans.

Subpart C—Reporting Requirements

1281.20 General.
1281.21 Mortgage Reports.
1281.22 Periodic reports.
1281.23 Bank data integrity.

Authority: 12 U.S.C. 1430c.

Subpart A—General

§ 1281.1 Definitions.

As used in this part:

Acquired Member Assets (AMA) program means a program that authorizes a Bank to hold assets acquired from or through Bank members or housing associates by means of either a purchase or a funding transaction, subject to the requirements of 12 CFR parts 955 and 980, or successor regulations.

AMA-approved mortgage means a mortgage that meets the requirements of the AMA program at 12 CFR part 955, and is approved to be implemented under 12 CFR part 980, or successor regulations.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (balloon payment) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specific period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Bank means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank System means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

Borrower income means the total gross income relied on in making the credit decision.

Conforming mortgage means, with respect to a Bank, a conventional AMA-approved single-family mortgage having an original principal obligation that does not exceed the dollar limitation in effect at the time of such origination and applicable to such mortgage under 12 CFR 955.2(a)(1)(i) and 12 U.S.C. 1717(b)(2), as these sections may be amended.

Conventional mortgage means a mortgage other than a mortgage as to which a Bank has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Data Reporting Manual (DRM) means the manual prepared by FHFA in connection with the Banks' reporting requirements, as may be supplemented from time to time, including reporting requirements under this part.

Day means a calendar day.

Designated disaster area means any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Banks.

Director means the Director of FHFA, or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Families in low-income areas means:

(1) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(2) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(3) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.

FEMA means the Federal Emergency Management Agency.

FHFA means the Federal Housing Finance Agency.

HMDA means the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801, *et seq.*), as amended.

HOEPA mortgage means a mortgage covered by section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)), as amended by the Home Ownership Equity Protection Act (HOEPA), as implemented by the Board of Governors of the Federal Reserve System.

HUD means the United States Department of Housing and Urban Development.

Low-income means income not in excess of 80 percent of area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Banks annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with 12 CFR 1263.20 or 1263.24(b), or successor regulation(s).

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) Black or African American—a person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means income not in excess of area median income.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Bank or Banks under this part and/or the Data Reporting Manual.

Mortgage purchase means a transaction in which a Bank bought or otherwise acquired a mortgage.

Mortgage with unacceptable terms or conditions means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1,000, or an alternative amount requested by a Bank and determined by the Director as appropriate for small mortgages;

(i) For purposes of this definition, points and fees include:

(A) Origination fees;

(B) Underwriting fees;

(C) Broker fees;

(D) Finder's fees; and

(E) Charges that the member imposes as a condition of making the loan, whether they are paid to the member or a third party;

(ii) For purposes of this definition, points and fees do not include:

(A) Bona fide discount points;

(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(C) The cost of mortgage insurance or credit-risk price adjustments;

(D) The costs of title, hazard, and flood insurance policies;

(E) State and local transfer taxes or fees;

(F) Escrow deposits for the future payment of taxes and insurance premiums; and

(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(2) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(3) Prepayment penalties, except where:

(i) The mortgage provides some benefit to the borrower in exchange for the prepayment penalty (*e.g.,* a rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(4) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(5) Underwriting practices contrary to the Interagency Guidance on

Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by federal banking agencies;

(6) Failure to comply with fair lending requirements; or

(7) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

Purchase money mortgage means a mortgage given to secure a loan used for the purchase of a single-family residential property.

Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; or

(6) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Bank already owns or has an interest in the balloon note at the time of the conversion.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family housing.

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than one year before the Bank purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Very low-income means income not in excess of 50 percent of area median income.

Subpart B—Housing Goals

§ 1281.10 General.

Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:

(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;

(b) A volume threshold for the application of the housing goals to a Bank;

(c) Requirements for measuring performance under the housing goals; and

(d) Procedures for monitoring and enforcing the housing goals.

§ 1281.11 Bank housing goals.

(a) *Volume threshold.* The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank's purchases of AMA-approved mortgages in that year exceeds $2.5 billion.

(b) *Market-based housing goals.* A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall be counted only for the applicable housing goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(d) *Low-income areas housing goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(e) *Very low-income families housing goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(f) *Refinancing housing goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of refinancing AMA-approved mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

§ 1281.12 General counting requirements.

(a) *Calculating the numerator and denominator for the housing goals.* Performance under each of the housing goals shall be measured using a fraction

that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b).

(1) *The numerator.* The numerator of each fraction is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for the housing goals.*—(1) When a Bank lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal and shall not be included in the numerator for that housing goal.

(2) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level (*i.e.,* low- or very low-income), the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1281.1.

(c) *Credit toward multiple goals.* A mortgage purchase by a Bank in a particular year shall count toward the achievement of each housing goal for which such purchase qualifies in that year.

(d) *Application of median income.* For purposes of determining an area's median income under § 1281.1, the area is:

(1) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(2) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(e) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(f) *Newly available data.* When a Bank uses data to determine whether a mortgage purchase counts toward achievement of any housing goal, and new data is released after the start of a calendar quarter, the Bank need not use the new data until the start of the following quarter.

§ 1281.13 Special counting requirements.

(a) *General.* FHFA shall determine whether a Bank shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under the housing goals, even if the transaction or activity would otherwise be counted under paragraph (c) of this section:

(1) Purchases of non-conventional single-family mortgages;

(2) Commitments to buy mortgages at a later date or time;

(3) Options to acquire mortgages;

(4) Rights of first refusal to acquire mortgages;

(5) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(6) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(7) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if a Bank already owns, or has an interest in, the balloon note at the time conversion occurs;

(8) Purchases of subordinate lien mortgages (second mortgages);

(9) Purchases of mortgages that were previously counted by a Bank under any current or previous housing goal within the five years immediately preceding the current performance year;

(10) Purchases of mortgages where the property has not been approved for occupancy; and

(11) Any combination of factors in paragraphs (b)(1) through (b)(10) of this section.

(c) *Other special rules.* Subject to FHFA's determination of whether a Bank shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages from each such transaction or activity shall be included in the denominator in calculating a Bank's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Cooperative housing and condominiums.* The purchase by a Bank of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals.

(2) *Seasoned mortgages.* The purchase of a seasoned mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals, except where the Bank has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(3) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* The purchase by a Bank of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1281.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals. FHFA will notify each Bank in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

§ 1281.14 Determination of compliance with housing goals; notice of determination.

(a) *Determination of compliance with housing goals.* On an annual basis, the Director shall determine whether each Bank has exceeded the volume threshold. For each Bank that has exceeded the volume threshold in a year, the Director shall determine the Bank's performance under each housing goal.

(b) *Failure to meet a housing goal.* If the Director determines that a Bank has failed to meet any housing goal, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of a preliminary determination under this section shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) *Notice.* The Director shall provide written notice to a Bank of a preliminary determination under this section, the reasons for such determination, and the information on which the Director based the determination.

(2) *Response period.*—(i) *In general.* During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section, the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was feasible.

(ii) *Extended period.* The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) *Shortened period.* The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) *Failure to respond.* The failure of a Bank to provide information during the 30-day period under this paragraph (b)(2), as extended or shortened, shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) *Consideration of information and final determination.* (i) *In general.* After the expiration of the response period under paragraph (b)(2) of this section or receipt of information provided during such period by a Bank, the Director shall issue a final determination on:

(A) Whether the Bank has failed to meet the housing goal; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, the achievement of the housing goal was feasible.

(ii) *Considerations.* In making a final determination under paragraph (b)(3)(i) of this section, the Director shall take into consideration any relevant information submitted by a Bank during the response period.

§ 1281.15 Housing plans.

(a) *Housing plan requirement.* If the Director determines that a Bank has failed to meet any housing goal and that the achievement of the housing goal was feasible, the Director may require the Bank to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Bank will take to achieve the housing goal for the next calendar year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plan.* The Director shall review and approve or disapprove a housing plan as follows:

(1) *Approval.* The Director shall review each submission by a Bank, including a housing plan submitted under this section and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Bank Act, this part, and any other applicable provision of law.

(2) *Notice of approval and disapproval.* The Director shall provide written notice to a Bank submitting a housing plan of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by a Bank, the Bank shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Bank 15 days to submit a new plan.

(f) *Enforcement of housing plan.* If the Director finds that a Bank has failed to meet any housing goal, and that the achievement of the housing goal was feasible, and has required the Bank to submit a housing plan under this section, the Director may issue a cease and desist order, or impose civil money penalties, if the Bank refuses to submit such a plan, fails to submit an acceptable plan, or fails to comply with the approved plan. In taking such action, the Director shall follow procedures consistent with those provided in 12 U.S.C. 4581 through 4588 with respect to actions to enforce the housing goals.

Subpart C—Reporting Requirements

§ 1281.20 General.

This subpart establishes data submission and reporting requirements to provide the Director with mortgage and other information relating to the Banks' performance in connection with the housing goals, as supplemented from time to time in the Banks' Data Reporting Manual (DRM).

§ 1281.21 Mortgage Reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Banks' housing goal activities, each Bank shall collect and compile computerized loan-level data on each AMA-approved mortgage purchase, as described in the DRM. The Director may, from time to time, issue a list in the DRM specifying the loan-level data elements to be collected and maintained by the Banks and provided to the Director. The Director may revise the DRM list by written notice to the Banks.

(b) *Semi-annual Mortgage Reports.* Each Bank shall submit to the Director, on a semi-annual basis, a Mortgage Report. The second semi-annual Mortgage Report each year shall serve as the annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

(1) Aggregations of the loan-level mortgage data compiled by each Bank under paragraph (a) of this section for year-to-date AMA-approved mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of AMA-approved mortgages on owner-occupied properties purchased by each Bank that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of Reports.* Each Bank shall submit its first semi-annual Mortgage Report within 45 days of the end of the

second quarter. Each Bank shall submit its annual Mortgage Report within 60 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its annual Mortgage Report, a Bank may revise its first semi-annual Mortgage Report for that year.

(e) *Format.* The Banks shall submit to the Director computerized loan-level data with the Mortgage Report, in the format specified in writing by the Director.

§ 1281.22 Periodic reports.

Each Bank shall provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

§ 1281.23 Bank data integrity.

(a) *Certification.* (1) The senior officer of each Bank who is responsible for submitting the annual Mortgage Report, or for submitting any other report(s), data or other information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(b) *Adjustment to correct errors, omissions or discrepancies.* FHFA shall determine on an annual basis the official housing goals performance figures for a Bank that is subject to the housing goals. FHFA may resolve any error, omission or discrepancy by adjusting the Bank's official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year's goal performance.

Dated: December 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–32350 Filed 12–23–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0354 Airspace Docket No. 10–AAL–10]

Establishment of Class E Airspace; Port Clarence, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the legal description and airport coordinates for Port Clarence Coast Guard Station (CGS) Airport, Port Clarence, AK, contained in a final rule that was published in the **Federal Register.**

DATES: Effective date 0901 UTC, January 13, 2011.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato.service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document FAA–2010–0354, Airspace Docket No. 10–AAL–10, published on Tuesday, October 12, 2010 [75 FR 62457] establishes Class E airspace at Port Clarence CGS Airport, Port Clarence, AK. The airspace description referred to the Anchorage Arctic CTA/FIR boundary as a limitation of the western boundary of the Class E airspace area. This reference is in error and is corrected by substituting the actual coordinates of the boundary. The airport reference point coordinates also contained an error caused by rounding. This action corrects that error. The correct full legal description is provided below.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace legal description for Port Clarence CGS Airport, published in the **Federal Register**, Tuesday, October 12, 2010 (75 FR 62457), FR Doc 2010–25479, page 62458, column 2 is corrected as follows:

AAL AK E5 Port Clarence, AK [Corrected]

Port Clarence, CGS Airport, AK

(Lat. 65°15′12″ N., Long. 166°51′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Port Clarence CGS Airport, AK and within 1.5 miles either side of the 180° bearing from the Port Clarence CGS Airport, extending from the 6.4-mile radius to 13.2 miles south of the Port Clarence CGS Airport; and that airspace extending upward from 1,200 feet above the surface within a 73 mile radius of the Port Clarence CGS Airport, AK, excluding that portion extending west of a line from Lat. 64°48′20″ N., Long. 169°31′27″ W., to Lat. 60°00′00″ N., Long. 168°58′23″ W., to Lat. 66°05′44″ N., Long. 168°58′23″ W.

Issued in Anchorage, AK, on December 13, 2010.

James M. Miller,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–32293 Filed 12–23–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 950

[Docket No. 090113018–9019–01]

RIN 0648–AX74

Schedule of Fees for Access to NOAA Environmental Data, Information, and Related Products and Services

AGENCY: National Environmental Satellite, Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NESDIS establishes a new schedule of fees for the sale of its data, information, and related products and services to users. NESDIS is revising the fee schedule to ensure that the fees accurately reflect the costs of providing access to the environmental data, information, and related products and services. NESDIS is authorized under 15 U.S.C. 1534 to assess fees, up to fair market value, for access to environmental data, information, and products derived from, collected, and/or archived by NOAA. Other than depreciation, costs to upgrade computer hardware and software systems will not be included in the fees charged to users.

DATES: *Effective Date:* February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Angel Robinson (301) 713–9230 ext 186.

SUPPLEMENTARY INFORMATION:

Background

NESDIS operates NOAA's National Data Centers for Climate, Geophysics, Oceans, and Coasts. Through these Data Centers, NESDIS provides and ensures timely access to global environmental data from satellites and other sources, provides information services, and develops science products.

NESDIS maintains some 1,300 data bases containing over 2,400 environmental variables at three National Data Centers and seven World Data Centers. These centers respond to over 2,000,000 requests for these data and products annually from over 70 countries. This collection of environmental data and products is growing exponentially, both in size and sophistication.

Users have the ability to access the data offline, online and through the NESDIS.

e-Commerce System (NeS) online store. Our ability to provide these data, information, products and services depends on user fees.

New Fee Schedule

The new fee schedule lists both the current fee charged for each item and the new fee to be charged to users that will take effect beginning February 1, 2011. The schedule applies to the listed services provided by NESDIS on or after this date, except for products and services covered by a subscription agreement in effect as of this date that extends beyond this date. In those cases, the increased fees will apply upon renewal of the subscription agreement or at the earliest amendment date provided by the agreement.

NESDIS will continue to review the user fees periodically, and will revise such fees as necessary. Any future changes in the user fees and their effective date will be announced through notice in the **Federal Register**.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this rule falls within the proprietary exception of subparagraph (a)(2) of section 553. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 950

Organization and functions (Government agencies).

Michael H. Abreu,

Chief, Financial Officer (CFO/CAO).

■ For the reasons set forth above, 15 CFR Part 950 is amended as follows:

PART 950—ENVIRONMENTAL DATA AND INFORMATION

■ 1. The authority citation for part 950 continues to read as follows:

Authority: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

■ 2. Appendix A to Part 950 is revised to read as follows:

APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA

Name of product/data/publication/information/service	Current fee	New fee
NOAA National Data Centers Standard User Fees:		
Department of Commerce Certification	$85.00	$91.00
General Certification	68.00	74.00
Paper Copy	2.00	2.00
Online In-Situ Digital Data	6.00	6.00
Data Poster	18.00	18.00
Shipping Service		
for orders totaling less than $50.00	3.00	3.00
for orders totaling $50.00 or more	3.00	3.00
Rush Order Fee	60.00	60.00
Super Rush Order Fee	100.00	100.00
Foreign Handling Fee		
for orders totaling less than $100.00	22.00	39.00
for orders totaling $100.00 or more	22.00	39.00
Additional National Climatic Data Center (NCDC) User Fees:		
NEXRAD Doppler Radar Color Prints	18.00	17.00
Paper Copy from Electronic Media	6.00	6.00
Offline In-Situ Digital Data	164.00	156.00
Microfilm Copy (roll to paper) per frame from existing film	13.00	14.00
Satellite Image Product	82.00	83.00
Offline Satellite Digital Data (average unit size is 1.2 gigabytes).		
Offline Radar Digital Data (Level II) (average unit size is 4 gigabytes).		
Offline Satellite, Radar, and Model Digital Data (average unit size is 1 terabyte)	996.00	984.00
Conventional CD–ROM/DVD	74.00	69.00
Specialized CD–ROM/DVD	165.00	158.00
CD–ROM/DVD Copy, Offline	35.00	35.00
CD–ROM/DVD Copy, Online Store	17.00	17.00
Facsimile Service	80.00	80.00
Order Handling	*	9.00
Non-Digital Order Consultation	*	7.00
Digital Order Consultation	*	22.00
Additional National Oceanographic Data Center (NODC) User Fees:		
NODC Non-Serial Publications	20.00	22.00
NODC Non-Standard Data; Select/Copy to CD, DVD or Electronic Transfer, Specialized, Offline	42.00	49.00
NODC Non-Standard Data; 1–1 Direct Copy to CD, DVD, or Electronic Transfer, Specialized, Offline	19.00	19.00
NODC Digital and Non-Digital Off-the-Shelf Products, Online	4.00	4.00
NODC Digital and Non-Digital Off-the-Shelf Products, Offline	6.00	9.00

APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA—Continued

Name of product/data/publication/information/service	Current fee	New fee
NODC Order Consultation Fee	*	2.00
NODC Handling and Packing Fee	*	7.00
World Ocean Database-World Ocean Atlas 2009 DVDs	*	11.00
Additional National Geophysical Data Center (NGDC) User Fees:		
Mini Poster	1.00	1.00
Icosahedron Globe	3.00	.50
Convert Data to Standard Image	5.00	5.00
Single Orbit OLS	16.00	16.00
Single Orbit OLS, Additional Orbits	5.00	5.00
Single Orbit OLS—Subset	16.00	16.00
Single Orbit OLS, Subset—Additional Orbits	5.00	5.00
Geolocated Data	43.00	45.00
Subset of Pre-existing Geolocated Data	26.00	27.00
Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	70,140.00	73,614.00
Most Recent DMSP–OLS Thermal Band/Cloud Cover Mosaics from Multiple Satellites	238.00	250.00
Nightly DMSP–OLS Mosaics, Visible and Thermal Band Data from One Satellite	223.00	235.00
Global DMSP–OLS Nighttime Lights Lunar Cycle Composite from One Satellite	6,020.00	6,307.00
Radiance Calibrated Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	77,177.00	81,047.00
Research Data Series CD–ROM/DVD	25.00	25.00
Custom Analog Plotter Prints	60.00	60.00
NOS Bathymetric Maps and Miscellaneous Archived Publication Inventory	7.00	7.00
Global DMSP–OLS Annual Composite of Persistent Nighttime Lights on Monthly Increments from One Satellite	7,665.00	8,032.00
Data Poster	*	18.00
High Definition Geomagnetic Model	*	19,997.00
* Reflects a new product not previously offered.		

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–029–FOR; Docket ID No. OSM–2008–0022]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is approving an amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Montana is proposing the addition of guidelines regarding normal husbandry practices to improve operational efficiency and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Jeff Fleischman, Director, Casper Field Office Telephone: (307) 261–6550 Internet Address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this [Act] * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this [Act]." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated July 3, 2008, Montana sent OSMRE an amendment to its program (SATS number MT–029–FOR; Administrative Record No. OSM–2008–0022) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the November 10, 2008, **Federal Register** (73 FR 66569). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2008–0022–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 10, 2008. We did not receive any comments.

During our review of the amendment, we identified concerns regarding the proposed normal husbandry practices for *Landscaping Activities* and *Erosion and Settling Repair.* We notified Montana of these concerns by letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0013). Our concerns are explained in detail in Section III of this notice.

Montana responded in a letter dated May 12, 2009, by sending us a revised amendment (Administrative Record No. OSM–2008–0022–0012). Montana made the appropriate changes to the normal husbandry practices for *Erosion and Settling Repair* and *Landscaping Activities.* The provisions were acceptable to OSMRE.

Based upon Montana's revisions to its amendment, we reopened the public comment period in the August 13, 2009, **Federal Register** (74 FR 40799) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 14, 2009. We did not receive any comments.

III. OSMRE's Findings

This section contains our findings concerning the amendment to the Montana program. We are making these findings in accordance with the criteria and procedural requirements of SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

What is Montana proposing to change?

Montana proposes the addition of Normal Husbandry Practices Guidelines to the Administrative Rules of Montana. OSMRE must approve the list of normal husbandry practices that mine operators may employ without restarting the responsibility period prior to application for Phase III bond release. The September 7, 1988, **Federal Register** notice (53 FR 34641) states that OSMRE "would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice" and that the regulatory authority "would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]."

The Federal regulations at 30 CFR 816.116(c)(1) for surface mining operations and 817.116(c)(1) for underground mining operations require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) require that a regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE's Director that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

Montana is proposing to add ten categories of normal husbandry practices that will not be considered augmented practices and will not result in the restart of the responsibility period. Each category has an associated list of Standard Conservation Practices currently approved by the Montana State Office of the Natural Resources Conservation Service that will be included as approved normal husbandry practices for the category. These National Resources Conservation Service (NRCS) Standards can be found at *http://www.regulations.gov* (Administrative Record No. OSM–2008–0022–0001).

During our initial review of the amendment proposal, OSMRE identified proposed normal husbandry practices that we determined could not be considered "normal" as defined in 30 CFR 816.116(c)(4) and 817.116(c)(4). These included the proposed normal husbandry practices for *Erosion and Settling Repair* and *Landscaping Activities.* We notified Montana of our concerns by letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0009). We delayed final rulemaking to afford Montana the opportunity to submit new material to address the deficiencies. By letter dated May 12, 2009, Montana responded to the concern letter, providing rationale to demonstrate that the proposed guidelines for *Erosion and Settling Repair* and *Landscaping Activities* can be expected to continue as part of the post mining land use, or if discontinuance of the practices after the liability period expires, it will not reduce the probability of permanent revegetation success, as prescribed in 30 CFR 816.116(c)(4) and 817.116(c)(4) (Administrative Record No. OSM–2008–0022–0010). Montana also elected to omit the NRCS practices that were not relevant or that were potentially problematic. Please *see* sections *III.D.* and *III.F.* for more information about the proposed revised sections for *Erosion and Settling Repair* and *Landscaping Activities.* OSMRE announced the reopening of the comment period in the **Federal Register** on August 13, 2009 (74 FR 40799). The comment period closed September 14, 2009. No comments were received.

To remain clear and concise and to eliminate repetition, we have grouped the ten categories of proposed normal husbandry practices as follows: *Interseeding and Supplemental Planting of Tree and Shrub Seedlings* (III.A.); *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* (III.B.); *Grazing* (III.C.); *Erosion and Settling Repair* (III.D.); *Development and Maintenance of Water Resources* (III.E.); and *Landscaping Activities* (III.F.). The findings include whether the practice being approved as normal husbandry is subject to an acreage limitation. That is, the practice can be applied only to a percentage of the reclaimed acreage. Other practices have no acreage limitation.

A. *Interseeding and Supplemental Planting of Tree and Shrub Seedlings.* Montana proposes to add the following language regarding *Interseeding and Supplemental Planting:*

> Interseeding is done to enhance revegetation, rather than to augment revegetation. Interseeding is defined as a secondary seeding into established revegetation to improve composition, diversity or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Interseeding may be used to take advantage of favorable climatic conditions and to enhance germination and establishment of reclamation species requiring extended periods of stratification or other special environmental conditions. Interseeding may also be used to improve or alter the compositional balance between forage species and shrubs, or between warm and cool season grasses.
>
> Interseeding of native species and approved introduced species may be implemented up to six (6) years prior to Phase III bond release for grazing land, fish and wildlife habitat, forestry, or recreation post-mining land uses. Augmented seeding or seeding of introduced and non-native

species other than those approved by the Department is not allowed as a Normal husbandry practice. No reclaimed acreage limit applies to interseeding.

To promote and enhance establishment of wildlife habitats, increase diversity, and improve age-class structure in monotypic stands of trees and shrubs, mine operators may transplant native trees and shrubs and/or plant tree and shrub nursery stock on reclamation units up to six (6) years prior to Phase III bond release for all post-mining land uses. As long as the approved post-mining land use is being met, no reclaimed acreage limit applies to interplanting of native transplants or nursery stock.

In all cases, damage to established or emergent vegetation should be avoided. Methods for interseeding both herbaceous and woody species may include hand planting, broadcast, range drill or interseeded applications, and other methods as deemed appropriate by the operator. Chemical fallowing of existing herbaceous perennial vegetation may be employed to reduce competition prior to interplanting of woody species. Operators are encouraged to modify seeding equipment to optimize planting and reduce soil compaction or damage to existing vegetation. Use of livestock for trampling seed and mulch into the soil is also encouraged as an approved husbandry practice.

In support of the proposed practices for *Interseeding and Supplemental Planting of Tree and Shrub Seedlings,* Montana made reference to the following U.S. Department of Agriculture's *Natural Resources Conservation Service (NRCS) Practice Standards for Montana:* Channel Bank Vegetation (322), Critical Area Planting (342), Windbreak/Shelterbelt Establishment (380), Field Border (386), Riparian Herbaceous Cover (390), Riparian Forest Buffer (391), Filter Strip (393), Stream Habitat Improvement and Management (395), Hedgerow Planting (422), Range Planting (550), Tree and Shrub Establishment (612), Restoration and Management of Rare or Declining Habitats (643), Wetland Wildlife Habitat Management (644), Upland Wildlife Habitat Management (645), Early Successional Habitat Development/Management (647), Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659).

OSMRE previously approved similar language as a normal husbandry practice in New Mexico (65 FR 65770, November 2, 2000). The Montana proposal is based on language from the approved New Mexico program.

For regulatory purposes, interseeding is done to enhance revegetation rather than to augment it. Interseeding is defined as a secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Based on these references and practices, it is clear that in certain cases, interseeding is desirable to increase the structural and vegetative diversity of the reclaimed lands for wildlife habitat and for rangeland improvement.

OSMRE considers, on a practice-by-practice basis, the administrative record supporting each normal husbandry practice proposed by a regulatory authority (53 FR 34641, September 7, 1988). In 1983, OSMRE considered and rejected the idea of allowing interseeding and supplemental fertilization during the first 5 years of the 10-year responsibility period. While allowing replanting of trees and shrubs "*to utilize the best technology available*" without extending the responsibility period, OSMRE determined that augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period (*See* 48 FR 40156, September 2, 1983.)

However, in 1988, (53 FR 34641, September 7, 1988) OSMRE stated in the context of the Federal regulation at 30 CFR 816.116(c)(4) that seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities.

This is consistent with the preamble to the 1979 Revegetation Regulations (44 FR 15238, March 13, 1979) which states, "The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in 53 FR 34640: "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding, and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

Furthermore, 30 CFR 816.116(c)(4) and 817.116(c)(4) specifically require that any approved husbandry practice must be expected to continue as part of the postmining land use, or if the practices are discontinued after the liability period expires, cessation will not reduce the probability of permanent vegetation success. Therefore, any irrigation or fertilization (such as NRCS Standard *Channel Bank Vegetation, 322*), would have to comply with the spirit and intent of the regulations.

In response to comments received concerning an Ohio program amendment, OSMRE stated that the legislative history of the Act [SMCRA] reveals no specific Congressional intent in the use of the term "augmented seeding." Accordingly, OSMRE's interpretation of augmented seeding is given deference so long as it has a rational basis (*see* 63 FR 51832, September 29, 1998).

Included in the proposal to allow interseeding as a normal husbandry practice are proposed definitions for "augmented seeding" and "interseeding" to distinguish the differences between the two. Interseeding is done to enhance revegetation, rather than to augment revegetation. Montana defines interseeding as a secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is defined as reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Interseeding may be used to take advantage of favorable climatic conditions and to enhance germination and establishment of reclamation species requiring extended periods of stratification or other special environmental conditions. Interseeding may also be used to improve or alter the compositional balance between forage species and shrubs, or between warm and cool season grasses.

Interseeding is clearly aimed at establishing species that require special conditions for germination and the establishment or altering of species composition. Montana's discussion of interseeding as a normal husbandry practice further clarifies that interseeding is done to enhance the revegetation, rather than to augment the revegetation. Montana reiterates that interseeding is secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence.

Montana also proposes appropriate time frames limiting the application of interseeding as a normal husbandry practice without restarting the bond liability period, requiring that interseeding of native species and approved introduced species may be implemented up to six (6) years prior to Phase III bond release for grazing land, fish and wildlife habitat, forestry, or recreation post-mining land uses.

While it is OSMRE's desire to encourage wetland development and the

management of such systems in a proper functioning condition, it is also OSMRE's opinion that anything more than minor wetland related work (*see* the referenced NRCS practices cited (wetland restoration (657), wetland creation (658), and wetland enhancement (659)) would need to be completed at least six (6) years prior to Phase III bond release. Appropriate limits on aerial extents and time frames for implementation have been set for all proposed normal husbandry practices that would potentially use the wetland restoration, wetland creation, and wetland enhancement practice standards.

Montana has demonstrated that the proposed normal husbandry practices for interseeding and supplemental planting are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. As appropriate limits on time frames for implementation have been set for all proposed practices, exceeding these limits would result in extending the period of responsibility. For these reasons, OSMRE has determined that the proposed normal husbandry practices for *Interseeding and Supplemental Planting of Tree and Shrub Seedlings* meet the criteria to be approved as normal husbandry practices under 30 CFR 816.116 (c)(4) and 817.116(c)(4). We approve these changes to the Administrative Rules of Montana.

B. *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities.* Montana proposes to add the following language regarding *Mechanical Practices:*

Selective cutting, mowing and raking to control weeds, reduce standing dead vegetation or litter, increase decomposition of organic matter, and stimulate vegetative regrowth are approved husbandry practices. These practices are applicable to all post-mining land uses at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Mechanical Practices,* Montana made reference to the following NRCS Practice Standards for Montana: Brush Management (314), Fuel Break (383), Firebreak (394), Forage Harvest Management (511), Grazing Land Mechanical Treatment (548), Upland Wildlife Habitat Management (645), Early Successional Habitat Development/Management (647), Windbreak/Shelterbelt Renovation (650), and Forest Stand Improvement (666).

Montana proposes to add the following language regarding *Supplemental Mulching:*

Mulching of interseeded areas may be required if little of the original mulch application remains, there is limited organic matter in the root zone material, or potential for accelerated erosion exists. This practice is applicable to all approved post-mining land uses, and must be completed at least six (6) years prior to Phase III bond release. No reclaimed acreage limit applies.

In support of the proposed practices for *Mechanical Practices,* Montana made reference to the NRCS Practice Standard for Mulching (484).

Montana proposes to add the following language regarding *Prescribed Burning:*

Controlled burning may be used to reduce persistent and common weeds, undesirable vegetation, litter buildup, or weed seed-load on reclaimed lands. Prescribed fire may also be used to reduce vegetative competition and stimulate growth of desired species. This practice is applicable to all post-mining land uses at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Prescribed Burning,* Montana made reference to the NRCS Practice Standards for Prescribed Burning (338) and Firebreak (394).

Montana proposes to add the following language regarding *Pest Control, including weeds, vertebrate and invertebrate animals, fungi and diseases:*

Prior to implementing control of weeds and other pests, the respective county weed board must approve a comprehensive noxious weed control plan.

Selection of herbicides and mechanical control techniques represents a compromise between affecting the desirable species in reclamation units and controlling invasive and damaging organisms. Application of herbicides to control weeds may be necessary in some cases where steep slopes and rugged terrain prohibit access for mechanical control, fencing for managed grazing, or the use of fire. All herbicide applications, however, must be timed to avoid damage to shrub seedlings and grass seedlings in stages of growth prior to the fourth leaf stage. Both spraying (by hand or from a vehicle), and rope wicking may be used as application techniques. Operators may modify these techniques or use other forms of application.

The use of fire or controlled grazing are generally encouraged for the control of annual brome grasses (*Bromus tectorum* and *B. japonicum*) and annual forbs such as Russian thistle (*Salsola kali*) or kochia (*Kochia scoparia),* because most shrub species will recover from a light fire and/or grazing. Herbicide use, however, may be necessary, when dealing with persistent, deeply rooted perennial species such as the knapweeds (*Centaurea spp.*), Canada thistle (*Cirsium arvense*) or leafy spurge (*Euphorbia esula*). These species typically do not respond to mechanical control or burning. Treatment of species such as salt cedar (*Tamarix ramosissima*) will require extreme caution to prevent herbicide and herbicide residues from entering surface waters or the groundwater. Operators proposing to use restricted chemicals must ensure that these chemicals are applied by certified applicators. This practice is applicable to all post-mining land uses and at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Pest Control,* Montana made reference to the NRCS Practice Standards for Prescribed Burning (338) and Pest Management (595).

Montana proposes to add the following language regarding *Agricultural Activities:*

Croplands and pasturelands require ongoing management activities. Annual or periodic seeding, fertilizing, irrigating, or other normal agricultural activity carried out on approved cropland or pastureland are such activities. These practices are applicable at any time during the liability period for the listed post-mining land uses, with no reclaimed acreage limits.

In support of the proposed practices for *Agricultural Activities,* Montana made reference to the following NRCS Practice Standards for Montana: Conservation Crop Rotation (328), Residue and Tillage Management (329), Cover Crop (340), Residue Management, Seasonal (344), Residue Management, Mulch Till (345), Residue Management, Ridge Till (346), Field Border (386), Filter Strip (393), Forage Harvest Management (511), Strip Cropping (585), and Nutrient Management (590).

The Montana proposed husbandry practices for *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* are based on language in the approved New Mexico program (65 FR 65770).

As proposed, the normal husbandry practices for *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. In addition, Montana set an appropriate limit on the time frame for the implementation of the proposed practice for *Supplemental Mulching.* If a permittee exceeded the time limit, the permittee would have to extend the period of liability for demonstrating success of revegetation. OSMRE finds that Montana's proposed normal husbandry practices identified above are consistent with and no less effective than the Federal regulations at 30 CFR 816.116/817.116(c)(1) and (4) in meeting

the requirements of SMCRA. We approve the proposed changes.

C. *Grazing.* Montana proposes to add the following language regarding *Grazing:*

Livestock grazing is a standard land use and is a management tool that can be successfully used to increase plant diversity and production, as well as improve the overall health of a particular vegetative stand. On the Montana coal lands, grazing is primarily limited to cattle; however, grazing by sheep, goats or horses should also be considered when specific vegetation objectives are desired. The operator may use grazing to remove dead materials, harvest production, and stimulate vegetative growth as a husbandry practice.

This practice is applicable to cropland, pastureland, grazing land, fish and wildlife habitat, forestry, and recreation post-mining land uses. Grazing may be conducted at any time during the liability period.

Montana proposes to include the NRCS Standards for Fence (382) and Prescribed Grazing (528) to support *Grazing.*

Montana's proposal makes it clear that grazing is a management tool used to meet particular objectives, including increased plant diversity, overall vegetative health, removal of dead (plant) material, harvest production, and the stimulation of vegetative growth.

It is also inherent in the approval that management will be within the bounds of normal husbandry practices within the region for unmined lands with similar uses regardless of whether or not a grazing plan, a grazing monitoring plan, or yearly recalculations of carrying capacities and stocking rates are performed.

Montana limits the practice of *Grazing* to the following postmining land uses: Cropland; pastureland; grazing land; fish and wildlife habitat; forestry; and recreation.

Montana demonstrates that the NRCS standard practices proposed for *Grazing* are the usual or expected state, form, amount, or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands within the region having land uses similar to the approved postmining land use of the disturbed area. The proposed normal husbandry practices for *Grazing* meet the criteria for approval under 30 CFR 816/817.116(c)(4). We, therefore, approve the proposed language.

D. *Erosion and Settling Repair.* Montana proposes to add the following language regarding *Erosion and Settling Repair:*

Repair of rills, gullies, headcuts or similar erosional features is sometimes necessary. Settling of reclaimed spoils creates depressions, sink holes and linear features. Additionally, settling along pipelines, underground utilities, *etc.* often results in undesirable features. Features to be repaired must be characteristic of unmined lands in the region and the damage must not be caused by a lack of planning, design, or implementation of the mining and reclamation plan. When deciding whether a particular erosion feature should be repaired the operator should consult the Department's Guidelines on Erosional Features. The use of fertilization or other facilitating practices (*i.e.* irrigation), as mentioned in some Normal husbandry practices (*e.g.* 342—Critical Area Planting and 412—Grassed Waterway) will not be approved unless it can be demonstrated that the practice will continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent vegetation success.

Repairs considered to be normal husbandry practices include hand work with shovels and similar tools, mechanical manipulation of small areas (including hauling fill into small areas of settling), installation of erosion-control matting, sediment filtration (silt fence, hay or straw bales, rock berms, check dams, *etc.*), hand, broadcast and drill seeding of small areas, and raking. This practice is applicable to all post-mine land uses at any time during the liability period. No more than 10% of the respective reclaimed unit may be repaired as a normal husbandry practice. If erosion and settling repairs are required on more than 10%, the liability period will be reinitiated. Erosion and settling repairs completed prior to the initiation of the 10-year liability period are not included in the 10%.

Montana proposes to include the NRCS Standards for Channel Bank Vegetation (322), Critical Area Planting (342), Stream Habitat Improvement and Management (395), Grassed Waterway (412), Use Exclusion (472), Range Planting (550), Heavy Use Area Protection (561), Streambank and Shoreline Protection (580), and Channel Stabilization (584) to be used for *Erosion and Settling Repair.*

Guidance concerning the repair of rills and gullies is found in the September 2, 1983, **Federal Register** notice (48 FR 40157). Here OSMRE states that the regulatory authority could allow the repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of 30 CFR 816/817.116(c)(4) are met and after consideration of the normal conservation practices within the region.

Montana's proposed language for *Erosion and Settling Repair* is similar to language approved for New Mexico's Program in 65 FR 65770 (November 2, 2000). Montana is specific regarding the unit percentage of area that may be repaired (no more than ten percent), noting that if erosion and settling repairs are required on more than ten percent of the reclaimed unit, the liability period will be reinitiated. Montana satisfactorily demonstrates that the proposed normal husbandry practices for *Erosion and Settling Repair* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. We find that Montana's proposed normal husbandry practices for *Erosion and Settling Repair* are consistent with and no less effective than the Federal regulations at 30 CFR 816/817.116(c)(4) in meeting the requirements of SMCRA, and we approve them.

E. *Development and Maintenance of Water Resources.* Montana proposes to add the following language regarding *Development and Maintenance of Water Resources:*

Water resources may be developed to provide for better livestock distribution, seasonal wildlife habitat, or to take advantage of a naturally occurring situation, such as a spring or seep that develops in reclamation. Normal maintenance (cleaning, repair, upgrading, stabilizing with rock, and interseeding or replanting of vegetation) and protection (fencing and animal exclusion) of developed water resources, their shorelines, and the structures associated with developed water sources is considered a normal husbandry practice.

This practice is applicable to either water sources that can be developed or to water sources that have been developed for all approved post-mining land uses. Cleaning, repair, and upgrading may be conducted at any time during the liability period, with no reclaimed acreage limits. Ponds or permanent impoundments must be permitted in accordance with ARM 17.24.504 and 17.24.642. New development of ponds, wells, or any activity that requires stabilization, interseeding, or replanting must be completed at least six (6) years prior to Phase III bond release and is limited to no more than 10% of the reclaimed acreage in the bond release unit.

The proposed language lists the NRCS Standards for Channel Bank Vegetation (322), Critical Area Planting (342), Ponds (378), Fence (382), Grassed Waterway (412), Dry Hydrant (432), Micro-irrigation Systems (441), Sprinkler Irrigation Systems (442), Surface and Subsurface Irrigation Systems (433), Water Management Irrigation system (449), Use Exclusion (472), Spring Development (574), Streambank and Shoreline Protection (580), Channel Stabalization (584), Watering Facility (614), Water Harvesting Catchment (636), Water Well (642), and Shallow Water Development and Management (646) as practices used to develop and maintain water resources.

As previously mentioned, in 1983, OSMRE considered and rejected the idea of allowing interseeding and supplemental fertilization during the first 5 years of the 10-year responsibility period. While allowing replanting of trees and shrubs "to utilize the best technology available" without extending the responsibility period, OSMRE determined that augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period (48 FR 40156, September 2, 1983.)

However, in 1988, (53 FR 34641, September 7, 1988) OSMRE stated, in the context of the Federal regulation at 30 CFR 816/817.116(c)(4), that seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities.

This is consistent with the preamble to the 1979 revegetation regulations (44 FR 15238, March 13, 1979) which states that "the augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in FR 53 3640, which states, "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding, and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

Furthermore, 30 CFR 816/817.116(c)(4) specifically requires that any approved husbandry practice must be expected to continue as part of the postmining land use, or if the practices are discontinued after the liability period expires, cessation will not reduce the probability of permanent vegetation success.

Therefore, any irrigation, fertilization, or seeding such as those used in the incorporated NRCS Practices for Channel Bank Vegetation (322), or Critical Area Planting (342), or the NRCS Practices relating to irrigation, *etc.,* would have to comply with the Federal regulations at 30 CFR 816/817.116(c)(1) and (c)(4).

It is OSMRE's desire to encourage wetland development and the management of such systems in a proper functioning condition. Therefore, all Federal, State, and local laws and regulations need to be adhered to when working in aquatic or wetland systems, and/or in ways that might affect water quality. Impacts to existing hydrology will need to be assessed (*e.g.* Code 378—Ponds).

Montana demonstrates that the proposed practices for the *Development and Maintenance of Water Resources* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. As appropriate limits on time frames and acreages for implementation have been set for all proposed practices, exceeding these limits would result in extending the period of responsibility. This proposed language meets the criteria to be approved under 30 CFR 816/817.116(c)(4). We approve this proposed change to the Administrative Rules of Montana.

F. *Landscaping Activities.* Montana proposes to add the following language regarding *Landscaping Activities:*

> Periodic landscaping or vegetation management activity can be carried out on approved pastureland, grazing land, fish and wildlife habitat, forestry, recreation, industrial, or residential post-mining land uses. Practices which do not involve the establishment of new vegetation (seeding and planting) are applicable at any time during the liability period, with no reclaimed acreage limits. Practices which involve seeding or planting must be completed at least six (6) years prior to Phase III bond release. No reclaimed acreage limit applies.

Initially, Montana proposed the following NRCS Standards to support Landscaping Activities: Fuel Break (383), Firebreak (394), Hedgerow Planting (422), Irrigation System, Micro-irrigation (441), Irrigation System, Sprinkler (442), Irrigation System, Surface and Subsurface (443), Irrigation Water Management (449), Stream Crossing (578), Tree, Shrub Establishment (612), Windbreak/Shelterbelt Renovation (650), Wetland Restoration (657), Wetland Creation (658), Wetland Enhancement (659), and Forest Stand Improvement (666).

The Standard Conservation Practices that Montana referenced in its original amendment proposal relating to *Irrigation,* specifically Micro-irrigation Systems (441), Sprinkler Irrigation Systems (442), Surface and Subsurface Irrigation Systems (443), and Water Management Irrigation Systems (449), did not meet the requirements of 30 CFR 816/817.116(c)(4), which specifically exclude augmentative irrigation as being approved as a normal husbandry practice.

The preamble to the 1979 revegetation regulations (44 FR 15238, March 13, 1979) clearly states, "The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in FR 53, 3640: "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

In our concern letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0013), OSMRE requested that Montana justify why irrigation would be applicable to all land uses without extending the period of responsibility, or define when and for what land use such irrigation practices would be applicable under the constraints cited in the regulations, thereby specifying when such irrigation practices could be reasonably considered to be a normal husbandry practice.

OSMRE reminded Montana that anything more than minor wetland related work (wetland restoration (657), wetland creation (658), and wetland enhancement (659)), or any activity that requires more than minor stabilization, interseeding, or replanting would need to be completed at least six (6) years prior to Phase III bond release.

Regarding the Stream Crossings (578), OSMRE felt that this NRCS standard was overly broad and far-reaching. We requested that Montana explain why stream crossings would be applicable to all crossing types cited in the incorporated NRCS reference, at any time during the liability period without extending the period of responsibility; or define reasonable limits. Of particular concern are large projects, such as a bridge associated with a road crossing that might be installed near the end of the liability period. OSMRE believes that, in general, stream crossings should be restricted and clearly stated under what conditions and what types of stream crossings should be included, or at least which would be prohibited. OSMRE requested that Montana include some reasonable time limit before a Phase III bond release beyond which any stream crossings would be prohibited, so as to demonstrate the stability of such crossings and that no negative consequences are reasonably likely after Phase III bond release.

In Montana's May 12, 2009, response letter (Administrative Record No. OSM–2008–0022–0012), the State elected to eliminate the following NRCS Standards for Landscaping Activities: Hedgerow Planting (422), Irrigation System, Micro-irrigation (441), Irrigation System, Sprinkler (442), Irrigation System,

Surface and Subsurface (443), Irrigation Water Management (449), Stream Crossing (578), Tree, Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659).

Montana expressed that proposals for the use of irrigation systems will be addressed during the permitting or permit revision process and will be required to address OSMRE's limitations on the use of irrigation for landscaping activities. Montana proposed to delete the Stream Crossing standard (578) as it is essentially irrelevant to reclamation activities at Montana coal mines. Additionally, Montana responded to OSMRE's concern regarding Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659) by deleting these standards from the list of standards used to support *Landscaping Activities,* as they will be addressed through normal reclamation practices and time frames.

As a result of Montana's May 12, 2009, response to our concern letter dated April 16, 2009, OSMRE approves *only* the following NRCS Standards for *Landscaping Activities:* Fuel Break (383), Firebreak (394), Tree, Shrub Establishment (612), Windbreak/Shelterbelt Renovation (650), and Forest Stand Improvement (666).

For the proposed normal husbandry practice of *Landscaping Activities,* Montana referenced the NRCS supplements which support the use of these practices as normal husbandry for the region and set appropriate limits on time frames for implementation for all proposed practices. Exceeding these limits would result in extending the period of responsibility.

Montana thus has demonstrated that the proposed normal husbandry practices listed for *Landscaping Activities* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. The changes that Montana made to the normal husbandry practice for *Landscaping Activities* meet the requirements for approval under 30 CFR 816/817.116(c)(4). We approve the proposed changes.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. OSM–2008–0022–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. OSM–2008–0022–0014). We did not receive any comments from other Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Montana proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. We did, however, solicit comments from EPA in a letter dated October 3, 2008 (Administrative Record No. OSM–2008–0022–0014). We received an e-mail on October 20, 2008 (Administrative Record No. OSM–2008–0022–0016), notifying OSMRE that the EPA did not plan to review the proposed changes because they did not pertain to air or water quality standards.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Since this amendment has no effect on historic properties, OSMRE was not required to request comments from the SHPO and the ACHP. We did not request comments from the ACHP. The Montana SHPO was notified of the amendment proposal by a letter dated October 3, 2008, soliciting comments (Administrative Record No. OSM–2008–0022–0014), but did not submit any comments regarding this amendment proposal.

V. OSMRE's Decision

Based on the above findings, we approve Montana's July 3, 2008, proposed amendment for Normal Husbandry Practice Guidelines, as revised on May 12, 2009. We find that the proposed normal husbandry practices will not extend the period of responsibility for revegetation success and bond liability, and the proposed practices can be expected to continue as part of the postmining land use. If the practices are discontinued after the liability period expires, the probability of permanent vegetation success will not be reduced. The proposed practices listed for each category are normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Montana program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Montana to enforce only those approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and

promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 2010.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 3, 2008	December 27, 2010	Normal husbandry practices.

[FR Doc. 2010–32418 Filed 12–23–10; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–051–FOR; Docket ID No. OSM–2009–0013]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). North Dakota proposes revisions to rules and statutes that will allow the revegetation responsibility period to be reduced from ten years to five years for lands eligible for remining. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

DATES: *Effective Date:* December 27, 2010

FOR FURTHER INFORMATION CONTACT: Jeffery Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604–1018, 307–261–6552, *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 12, 2009, North Dakota sent us an amendment to its program (Amendment number XXXVIII, Administrative Record Docket ID: OSM–2009–0013) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the amendment on its own accord. The amendment reduces the reclamation liability period on previously mined areas from ten full years to five full years. The Federal regulations at 30 CFR 816.116 provide incentives for eligible remining operations including reduced revegetation responsibility periods (2 years in the East and 5 years in the West).

Specifically, North Dakota proposes revisions to the North Dakota Century Code at Chapter 38–14.1–24(18) (Environmental protection performance standards) and to the North Dakota Administrative Code at Article 69–05.2–09–02(14) (Permit applications—operation plans—maps and plans) and Article 69–05.2–22–07(2) and (4)(i) (Performance standards—Revegetation—Standards for success).

North Dakota proposes to reduce the reclamation liability period on previously mined areas from ten years to five years. This change will apply to the North Dakota Century Code as well as the North Dakota Administrative Code. North Dakota defines previously mined areas as "lands that were affected by coal mining activities prior to January 1, 1970." North Dakota also proposes to require permit applications that include previously mined areas to include additional maps and information addressing potential environmental and safety problems that might occur at the mining site.

We announced receipt of the proposed amendment in the February 9, 2010, **Federal Register** (Vol. 75, No. 26, FR page number 6330). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Docket ID: OSM–2009–0013).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 11, 2010.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Revisions to North Dakota's Rules and Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

North Dakota proposed revisions to the following rules containing language that is the same as or similar to the corresponding section of the Federal regulations. North Dakota Administrative Code (NDAC) 69–05.2–22–07 (30 CFR 816.116), Performance standards—Revegetation—Standards for success.

North Dakota proposes for areas meeting the definition of previously mined area to require a five year liability period for revegetation success. All other areas in North Dakota have a ten year liability period. The Federal regulations at 30 CFR 818.116 allow the same five year period.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and we approve it.

B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

North Dakota Century Code Chapter (NDCC) 38–14.1–24(18) (SMCRA Section 515(20)(B)), Environmental Protection Performance Standards.

North Dakota proposes to add a definition for "previously mined areas." The definition would adopt January 1, 1970, the effective date of North Dakota's first reclamation law, as the cut-off eligibility date for lands eligible for remining. Previously mined areas are those that were mined prior to January 1, 1970. The Federal definition of previously mined areas are those mined prior to August 3, 1977, and for which investigation reveals, are not reclaimed to the standards of SMCRA. Under North Dakota's proposed definition far fewer lands would be considered but

there is no determination as to their condition.

This date is more restrictive than SMCRA as clarified by the State. North Dakota states, "North Dakota's definition of lands eligible for remining will apply to fewer lands as compared to the SMCRA provisions. Since North Dakota's first reclamation law went into effect on January 1, 1970, we will only apply the special performance standard (the reduced revegetation liability period) to lands that were mined prior to that date. Therefore, for the purposes of remining under the coal regulatory program, land must have been mined prior to January 1, 1970, and be left in an inadequate reclamation status. Any lands that were mined in North Dakota between January 1, 1970, and August 3, 1977, are subject to certain reclamation standards as required by the pre-SMCRA State reclamation laws and will not be eligible for the reduced 5-year revegetation liability period. However, under the SMCRA provisions, the special remining standards can be applied to lands that were mined prior to August 3, 1977. We consider North Dakota's remining provisions to be more stringent than SMCRA since fewer lands are eligible for the special performance standards. In North Dakota, lands mined between January 1, 1970, and August 3, 1977, that are proposed to be remined or re-disturbed will be subject to the 10-year revegetation liability period, whereas under SMCRA they could qualify for the 5-year liability period."

North Dakota's explanation that the special performance standard (the 5-year revegetation liability period) will only apply to lands that were mined prior to January 1, 1970, but not to those lands mined between January 1, 1970, and August 3, 1977, that are proposed to be remined or re-disturbed, clarifies which lands qualify for the shorter responsibility period under its revised statute at NDCC Chapter 38, Section 14.1–24, subsection 18. North Dakota's adoption of the January 1, 1970, date rather than August 3, 1977, (the effective date of SMCRA) renders its definition no less stringent than the Act and we approve it.

C. Revisions to North Dakota's Rules With No Corresponding Federal Regulation

NDAC 69–05.2–09–02, Permit applications—Operation plans—Maps and plans.

This addition to North Dakota's rules does not have a Federal Counterpart. It requires the permit application under the remining provision to include potential environmental and safety hazards that could be reasonably anticipated to occur as well as include the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met. It is more stringent than the Federal rules since the Federal rules have no such requirement and we approve it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Docket ID: OSM–2009–0013), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record Docket ID: OSM–2009–0013).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(ii), OSM requested comments on the amendment from EPA (Administrative Record Docket ID: OSM–2009–0013). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 25, 2009, we requested comments on North Dakota's amendment (Administrative Record Docket ID: OSM- 2009–0013), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve North Dakota's November 12, 2009, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 2010.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
November 12, 2009	December 27, 2010	NDCC 38–14.1–24(18). NDAC 69–05.2–09–2. 2NDAC 69–05.2–22–07.

[FR Doc. 2010–32414 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–059–FOR; Docket No. OSM–2010–0001]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas revised its

program at its own initiative to improve operational efficiency. The fee changes encourage mining companies to more quickly reclaim lands and request bond release, thereby fulfilling SMCRA's purpose of assuring the reclamation of mined land as quickly as possible.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. *Telephone:* (918) 581–6430. *E-mail: aclayborne@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated January 5, 2010 (Administrative Record No. TX–666), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the April 26, 2010, **Federal Register** (75 FR 21534). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 26, 2010.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

16 Texas Administrative Code (TAC) Section 12.108 Permit Fees

Texas proposed to revise its regulations at 16 TAC sections 12.108(b)(1) through (b)(3) regarding annual permit fees by:

(1) Decreasing, from $150.00 per acre to $130.00 per acre, the amount of the fee in paragraph (b)(1) for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,

(2) Increasing, from $3.75 to $5.50, the amount of the fee in paragraph (b)(2) for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and

(3) Increasing, from $4,200.00 to $4,250.00, the amount of the fee in paragraph (b)(3) for each permit in effect on December 31st of the year.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than, the actual or anticipated cost of reviewing, administering, and enforcing the permit.

Texas' amendment describes how Texas funds its coal mining regulatory program. Texas operates on a biennial budget which appropriates general revenue funds for permitting and inspecting coal mining facilities within the state. This appropriation is contingent on the Railroad Commission of Texas (Commission) assessing fees sufficient to generate revenue to recover the general revenue appropriation. When calculating anticipated costs to the Commission, for regulating coal mining activity, Texas anticipates OSM providing grant funding up to fifty percent of the regulatory program costs based on section 705(a) of SMCRA. However, OSM does not agree that this is a reasonable expectation in light of the Administration's proposed fiscal year 2011 budget announced on February 2, 2010. The proposed fiscal year 2011 budget reduces overall funding to States, which may result in them receiving less than fifty percent of their anticipated regulatory program costs, consistent with Section 705 of SMCRA.

Texas adjusts its fees biennially to recover the amounts expended from State appropriations in accordance with a formula and schedule agreed to in 2005 by the coal mining industry and the Commission. This amendment represents the third adjustment to surface mining fees based upon that agreement. Adjustments are expected to continue for a ten year period that began in 2005. This amendment identifies historical and anticipated costs of conducting coal regulatory functions, describes how these costs are allocated to each of the fee types assessed by the Commission, and identifies the per unit rate for each fee that will be assessed during State fiscal years 2010 and 2011. OSM is concerned that the rate for each fee will not generate funds sufficient to cover the cost of the regulatory program.

We find that Texas' changes are consistent with the discretionary authority provided by the Federal Regulations at 30 CFR 777.17. OSM approves Texas' proposed permit fees, including the annual permit fees, recognizing that Texas has a process to adjust its fees to cover the cost of its regulatory program that exceeds fifty percent of the total program costs not covered by the Federal grant.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On January 22, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–664.02). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on January 22, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on

the amendment (Administrative Record No. TX–664.02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 22, 2010, we requested comments on Texas' amendment (Administrative Record No. TX–664.02), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on January 5, 2010.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Taking

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which

is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 2010.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
January 5, 2010	December 27, 2010	16 TAC 12.108(b)(1) through (b)(3).

[FR Doc. 2010–32406 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1105]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Crescent Railroad Drawbridge across the Upper Mississippi River, mile 481.4, at Rock Island, Illinois. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter and when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

DATES: This deviation is effective from 12:01 a.m., January 17, 2011 to 9 a.m. March 1, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1105 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1105 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, United States Coast Guard; telephone 314–269–2378, e-mail *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railway requested a temporary deviation for the Crescent Railroad Drawbridge, across the Upper Mississippi River, mile 481.4, at Rock Island, Illinois to open on signal if at least 24 hours advance notice is given for 44 days from 12:01 a.m., January 17, 2011 to 9 a.m., March 1, 2011 to allow the bridge owner time for preventive maintenance. The Crescent Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 20 (Mile 343.2 UMR), Lock No. 21 (Mile 324.9 UMR) and Lock No. 22 (Mile 301.2 UMR) from January 3, 2011 to February 28, 2011 will preclude any significant navigation demands for the drawspan opening for most of the deviation period.

The Crescent Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 25.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 13, 2010.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2010–32379 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1100]

Drawbridge Operation Regulation; Sassafras River, Georgetown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Sassafras River (Route 213) Bridge, mile 10.0, in Georgetown, MD. The deviation is necessary to facilitate mechanical repairs and gate replacement. This deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 5 a.m. on January 10, 2011 until 5 p.m. on January 21, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1100 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1100 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Maryland State Highway Administration owns and operates this bascule-type drawbridge and requested a temporary deviation from the current operating regulations set out in 33 CFR 117.570 to facilitate mechanical repairs and barrier gate replacement.

The Sassafras River Bridge (Route 213), at mile 10.0, in Georgetown, MD has a vertical clearance in the closed position to vessels of four feet, above mean high water. Under normal operating conditions, the draw would open on signal from November 1 through March 31, except from midnight to 8 a.m. when the draw only need open when at least a six-hour advance notice is given.

Under this temporary deviation, the Sassafras River (Route 213) Bridge will be maintained in the closed-to-navigation position beginning at 5 a.m. on January 10, 2011 until 5 p.m. on January 21, 2011. The drawbridge will not be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Based on historical bridge log data this may affect up to one vessel per day. Vessels with heights greater than 4 feet have no alternate routes.

The project being conducted during the month of January should have the least impact on mariners due to the lack of waterway use. The Coast Guard has and will continue to inform the users of the waterway through our Local and Broadcast Notices to Mariners Closure periods for the bridge will be announced so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 15, 2010.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–32380 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2006–0735; FRL–9241–8]

RIN 2060–AP77

Revisions to Lead Ambient Air Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA issued a final rule on November 12, 2008, (effective date January 12, 2009) that revised the primary and secondary National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. On December 30, 2009, EPA proposed revisions to the lead monitoring requirements. This action promulgates revisions to the monitoring requirements pertaining to where State and local monitoring agencies ("monitoring agencies") would be required to conduct lead monitoring.

DATES: This final rule is effective on January 26, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0735. All documents in the docket are listed on the *http://www.regulations.gov Web site.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Revisions to Lead Ambient Air Monitoring Requirements Docket, Docket ID No. EPA–OAR–2006–0735, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Air Quality Assessment Division, Office of Air Quality Planning and Standards (C304–06), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2364; fax number (919) 541–1903; e-mail address: *cavender.kevin@epa.gov.*

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I. Does this action apply to me?

This action applies to State, territorial, and local air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. This action may also affect tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

Categories and entities potentially regulated by this action include:

Category	NAICS code [a]
State/territorial/local/tribal government	924110

[a] North American Industry Classification System.

II. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

III. Background

The EPA issued a final rule on November 12, 2008, that revised the NAAQS for lead and associated ambient air lead monitoring requirements (73 FR 66964, codified at 40 CFR part 58). As part of the lead monitoring requirements, monitoring agencies are required to monitor ambient air near lead sources which are expected to or have been shown to have a potential to contribute to a 3-month average lead concentration in ambient air in excess of the level of the NAAQS. At a minimum, the 2008 rule required monitoring agencies to monitor near lead sources that emit 1.0 ton per year (tpy) or more. However, the 2008 rule allows this requirement to be waived by the EPA Regional Administrator if the monitoring agency can demonstrate that the source will not contribute to a 3-month average lead concentration in ambient air in excess of 50 percent of the level of the NAAQS (based on historical monitoring data, modeling, or other means).

Monitoring agencies were also required by the 2008 rule to conduct lead monitoring in large urban areas (identified as Core Based Statistical Areas, or CBSA, as defined by the Office of Management and Budget (OMB)) with a population of 500,000 people or more. The locations for these monitoring sites are intended to measure neighborhood-scale lead concentrations in urban areas impacted by resuspended dust from roadways, closed industrial sources which previously were significant sources of lead, hazardous waste sites, construction and demolition projects, or other fugitive dust sources of lead.

Following promulgation of the revised lead NAAQS and monitoring requirements, the Natural Resources Defense Council (NRDC), the Missouri Coalition for the Environment Foundation, Physicians for Social Responsibility, and Coalition to End Childhood Lead Poisoning ("the Petitioners") petitioned (NRDC, 2009) EPA to reconsider the lead emission rate at which monitoring is required (the "emission threshold," set at 1.0 tpy by the 2008 rule).[1] On July 22, 2009, EPA granted the petition to reconsider aspects of the monitoring requirements (Jackson, 2009). In response to the petition, EPA reviewed and reconsidered the monitoring requirements and on December 30, 2009, EPA proposed revisions to the requirements for both source-oriented and non-source-oriented monitoring for lead (74 FR 69050). We proposed to lower the emission threshold at which monitoring would be required (or a waiver granted) to 0.50 tpy, to require lead monitoring at NCore sites, and remove the existing CBSA-based non-source-oriented monitoring requirement. The comment period ended February 16, 2010. This action promulgates changes to the lead monitoring requirements reflecting our consideration of the comments received on the proposed revisions.

IV. Source-Oriented Monitoring Requirements

We are finalizing revisions to the source-oriented monitoring requirements. Specifically, we are lowering the emission threshold from 1.0 tpy to 0.50 tpy for industrial sources of lead (*e.g.,* lead smelters and foundries). However, as discussed more thoroughly in Section V, we are maintaining the emission threshold for airports at 1.0 tpy, and implementing an airport monitoring study to determine the need for monitoring of airports which emit less than 1.0 tpy of lead. The following paragraphs discuss what we proposed, the comments we received, and our rationale for our final decisions regarding the emission thresholds in response to the petition for reconsideration.

A. What We Proposed for Source-Oriented Monitoring

An emission threshold is used to identify lead emission sources which should be monitored because their emissions may cause or contribute to ambient lead concentrations that exceed the lead NAAQS. Monitoring agencies are required to conduct source-oriented lead monitoring (unless a waiver is granted as allowed by 40 CFR part 58 Appendix D, paragraph 4.5(a)(ii)) to measure the maximum lead concentration in ambient air resulting from each lead source which emits lead at a rate equal to or more than the emission threshold. The emission threshold for the revised NAAQS was first set at 1.0 tpy as part of the October 2008 lead NAAQS revisions (73 FR 66964, codified at 40 CFR part 58). On December 30, 2009, we proposed to lower the emission threshold from 1.0 tpy to 0.50 tpy (74 FR 69050).

We based our proposed revision on a review of the analyses conducted to identify an appropriate emission threshold at the time of final NAAQS revision. The analyses and our review are documented in the preamble to the proposed monitoring revisions (74 FR 69052). Specifically, we re-evaluated one of the analyses that EPA believed provided the best information on the potential impact of lead sources on ambient lead concentrations. This analysis used source-monitor pairs to estimate the lowest emission rate at which an industrial facility could exceed the lead NAAQS (Cavender 2008). In this analysis, source-oriented lead monitors within one mile of a lead source (identified from the 2002 National Emissions Inventory (NEI)) were identified. This group of sites was then narrowed down to sites near facilities emitting 1 tpy or more of lead into the ambient air, and then to sites which were only impacted by one lead emitting facility. Also, in cases where more than one monitor was identified within one mile of the same facility

[1] The Petitioners also filed a legal challenge to the monitoring provisions of the final lead NAAQS rule. *See Missouri Coalition for the Environment, et al.* v. *EPA,* (DC Cir. No. 09–1009). That litigation has been held in abeyance pending completion of EPA's reconsideration.

emitting 1 tpy or more of lead annually, EPA only used the monitor measuring the maximum lead concentration in the analysis. In this manner, EPA identified seven monitor-facility pairs meeting the emissions and distance criteria. Using data in the Air Quality System (AQS) database (*http://www.epa.gov/ttn/airs/airsaqs/*) for the years 2001–2003, EPA developed an estimate of the maximum 3-month average lead concentration for each monitoring site.[2] Next, EPA calculated a ratio of the maximum 3-month average concentration to the facility annual emissions (as identified in the 2002 NEI) to provide an estimate of the impact from the facility in units of micrograms per meter cubed (μg/m^3) per tpy. Dividing the level of the lead NAAQS (0.15 μg/m^3) by this ratio provides an estimate of the annual emissions level for the facility which would result in ambient lead concentrations just meeting the lead NAAQS, referred to here as a "site-specific emission threshold" (*see* Table 1).

TABLE 1—DATA USED TO ESTIMATE FACILITY IMPACTS BASED ON MONITORING DATA

AQS site ID	Maximum 3-month average lead concentration (μg/m^3)	NEI 2002 facility emission rate (tpy)	Ratio (μg/m^3-tpy)	Site-specific emission threshold (tpy)
011090003	1.2	4.5	0.27	0.56
171190010	0.33	1.3	0.25	0.59
290990013	1.8	58.8	0.03	4.90
340231003	0.23	1.7	0.14	1.11
420110717	0.24	4.8	0.05	3.00
471870100	0.93	2.6	0.36	0.42
480850009	0.75	3.2	0.23	0.64

This analysis shows that four of these seven lead sources support an emission threshold less than the emission threshold of 1.0 tpy set by the final rule on the revised lead NAAQS.

As part of the reconsideration, EPA evaluated the stability and sensitivity of the above analysis. To evaluate the stability of the site-specific emission threshold calculation, EPA performed the same analysis for these same seven facilities based on the emission estimates from the 2002 and 2005 NEI (Table 2) and estimated design values (*i.e.,* 3-month rolling average Pb concentration as determined by 40 CFR part 50 Appendix R) over the periods 2001–2003 and 2004–2006 (Table 3). Table 4 summarizes the site-specific emission thresholds calculated for these periods.

TABLE 2—NEI EMISSION ESTIMATES

AQS site ID	NEI facility ID	Facility name	2002 NEI facility emission rate (tpy)	2005 NEI facility emission rate (tpy)
011090003	NEI18383	Sanders Lead Co	4.5	4.44
171190010	NEI55848	National Steel Corp—Granite City Div	1.3	0.90
290990013	NEI34412	Doe Run Company, Herculaneum Smelter	58.8	28.09
340231003	NEINJ16031	Johnson Controls Battery Group Inc	1.7	1.34
420110717	NEI117	East Penn Mfg	4.8	1.88
471870100	NEI715	Metalico-College Grove, Inc	2.6	2.55
480850009	NEI6493	GNB Metals Div	3.2	3.18

TABLE 3—ESTIMATED DESIGN VALUES BASED ON ALTERNATIVE YEARS

AQS site ID	2001–2003 design value (μg/m^3)	2004–2006 design value (μg/m^3)
011090003	1.2	1.16
171190010	0.33	0.43
290990013	1.8	1.44
340231003	0.23	0.32
420110717	0.24	0.20
471870100	0.93	—[4]
480850009	0.75	0.77

TABLE 4—ESTIMATED SITE-SPECIFIC EMISSION THRESHOLDS BASED ON ALTERNATIVE YEARS

AQS site ID	Site-specific emission threshold	
	2002	2005
011090003	0.56	0.57
171190010	0.59	0.32
290990013	4.90	2.93
340231003	1.11	0.63
420110717	3.00	1.41
471870100	0.42	—[4]
480850009	0.64	0.62

TABLE 4—ESTIMATED SITE-SPECIFIC EMISSION THRESHOLDS BASED ON ALTERNATIVE YEARS—Continued

AQS site ID	Site-specific emission threshold	
	2002	2005
Minimum	0.42	0.32
Median	0.64	0.62
Maximum	4.90	2.93

Table 4 shows that, in most cases, the calculated emission threshold remained

[2] The estimate of the maximum 3-month average lead concentration for this analysis was completed prior to promulgation of the final data handling rules contained in 40 CFR Part 50 Appendix R. As such, minor differences in the estimated maximum 3-month average lead concentration appear in the estimates presented below for the same time period.

[3] EPA notes that, for facilities where emissions have dramatically decreased in recent years, re-entrained lead from historical deposits may influence the emission threshold calculation to a greater extent than for facilities where lead emissions have remained constant.

[4] Monitoring data at this site did not meet the minimum completeness requirements of 40 CFR part 50 Appendix R for this time period. No design value or site-specific emission factor was calculated for this time period.

fairly constant for a given facility over time, in general, varying by a factor of 2 or less. Site-specific emission thresholds varied from 0.32 tpy to 4.9 tpy with a median of 0.63 tpy.

EPA noted that these metrics may be exaggerated by outliers due to the limited number of facilities being evaluated. As such, EPA looked at how these metrics changed when the extreme sites (*i.e.,* the highest and lowest emitting sources) were removed. Excluding site 290990013 resulted in a lowering of the upper range to 3 tpy and the median to 0.62 tpy but did not affect the minimum (0.32 tpy). Excluding site 171190010 increased the minimum to 0.42 and the median to 0.64 tpy but did not affect the maximum.

In our discussion of the review, we noted that four of the seven lead sources used to determine an emission threshold support an emission threshold less than 1.0 tpy. Based on our review, we concluded that lead sources emitting less than 1.0 tpy of lead could cause or contribute to an exceedence of the lead NAAQS, and, as such, we proposed to lower the emission threshold to 0.50 tpy for all sources of lead. We requested comment on setting the emission threshold at a level above or below 0.50 tpy.

B. Comments Received on Source-Oriented Monitoring

We received 616 comments on our proposal to lower the emission threshold for all lead sources to 0.50 tpy. Of these comments, 601 were in favor of the proposed change to the emission threshold, four commenters supported maintaining the current 1.0 tpy emission threshold, and three commenters suggested emission thresholds below 0.50 tpy. The following paragraphs summarize the significant comments received and our responses to these comments.

The NRDC, on behalf of 20 additional organizations and two individuals,[5] supported our proposed revision of the emission threshold to 0.50 tpy, stating, "The latest and best available scientific evidence supports the adoption of a near-source monitoring threshold of 0.50 tons per year of lead to protect public health with an adequate margin of safety. The available evidence demonstrates that facilities emitting 0.5 tons per year of lead or more have the potential to contribute to a violation of the NAAQS." NRDC also states, "monitoring downwind of facilities that emit between 0.5 and 1 tons per year of lead is necessary to provide sufficient information about airborne lead levels near these facilities in order to adequately enforce the NAAQS and to protect health with an adequate margin of safety."

The National Association of Clean Air Agencies (NACAA) agreed there is evidence that high levels of lead exposure can occur near sources (other than airports) emitting 0.50 tpy of lead and supported the proposal to lower the source-oriented emissions threshold to 0.50 tpy, stating that lowering the threshold will help regulatory agencies gather the data necessary for fully implementing the lead NAAQS. Northeast States for Coordinated Air Use Management (NESCAUM) agreed with the proposal to change the emission threshold from 1.0 to 0.50 tpy at lead sources (other than airports). Other monitoring agencies that supported the change to an emission threshold of 0.50 tpy for industrial sources include the states of Maine, Illinois, and Wisconsin. In addition, several hundred comments supporting the change to a 0.50 tpy emission threshold were received from individuals as part of two mass comment campaigns.

The Doe Run Company offered two comments regarding the analysis used to identify the emission threshold. In its first comment, Doe Run questioned the use of the median of the site-specific emission thresholds rather than the arithmetic average of the individual site-specific emission thresholds. In response, we chose to use the median rather than the arithmetic average because the median is more representative of the central tendency of the site-specific emission thresholds. Outliers (values much higher or lower than the rest of the data set) can dramatically impact the arithmetic average, whereas the median is less affected by outliers. As can be seen in Table 1 above, the site-specific emission threshold calculated for site 290990013 is much higher than the rest of the site-specific emission thresholds, appears to be an outlier, and, as such, skews the average to a level much higher than the median (*i.e.,* central tendency) of the data. As can be seen, five of the seven site-specific emission threshold estimates (71 percent) are less than the average. Since the emission threshold is intended to represent an estimate of the lowest lead emission rate that under reasonable worst-case conditions (*e.g.,* meteorological and emission release conditions that lead to poor dispersion and high lead concentrations) could result in lead concentrations exceeding the NAAQS (Cavender, 2008), setting the emission threshold at a level that is higher than the site-specific emission thresholds for 71 percent of the sites evaluated is inappropriate. As such, we believe it is appropriate to use the median of this data set rather than the arithmetic mean to determine the emission threshold.

Doe Run also questioned why we limited the sites selected for the analysis to sources that were estimated to emit 1 tpy or more of lead. In response, we elected to only evaluate monitor-source pairs where the source was estimated to emit 1 tpy or more to better focus the analysis on those monitor-source pairs where the lead source was the primary contributor to the ambient lead concentrations. Based on our earlier review of the existing ambient lead measurements, we determined that even in areas where there is no current industrial source of lead, ambient lead concentrations were typically in the range of 0.02 to 0.03 $\mu g/m^3$ (USEPA, 2007). This "urban background" level of lead can impact the calculated site-specific emission thresholds, and has a higher impact as the source emissions (and consequently ambient lead concentrations) decrease. Therefore, we elected to limit our analysis to monitor-source pairs where the source was estimated to emit 1 tpy or more to minimize the impact on the emission threshold calculation from the ambient lead concentration impacts that were not due to the source's lead emissions. As can be seen in Table 1 above, the lead concentrations around the source-monitor pairs used were considerably higher than background, ranging from 0.23 to 1.8 $\mu g/m^3$ on a 3-month rolling average, and as such, by limiting the analysis to sources with emissions greater than 1 tpy, background Pb concentrations had a small impact on the emission threshold calculation.

C. Final Decision on Source-Oriented Monitoring

Our review of the emission threshold analyses reflects a greater certainty that an emission source (other than airports which is discussed separately below) emitting 0.50 tpy or greater may cause

[5] NRDC's comments were submitted on behalf of the National Resources Defense Council, the Missouri Coalition for the Environment, Physicians for Social Responsibility, the Coalition to End Childhood Lead Poisoning, American Bottom Conservancy, American Lung Association, Center on Race, Poverty & the Environment, Citizens Against Ruining the Environment, Clean Air Council, East Michigan Environmental Action Council, Learning Disabilities Association of America, New York City Environmental Justice Alliance, The Point, Public Interest Law Center of Philadelphia's Public Health and Environmental Justice Project, Respiratory Health Association of Metropolitan Chicago, Science and Environmental Health Network, Trust for Lead Poisoning Prevention, UPROSE, Utah Physicians for a Healthy Environment, Leslie and Jack Warden, WEACT for Environmental Justice and the Wasatch Clean Air Coalition.

ambient lead concentrations to approach or exceed the lead NAAQS. We believe it is necessary to lower the emission threshold for industrial sources to 0.50 tpy to better identify areas where the lead NAAQS may be exceeded. Therefore, we are revising the emission threshold for industrial sources to 0.50 tpy. Based on the 2005 NEI, 96 industrial facilities are estimated to emit 0.50 tpy or more.[6] Monitoring agencies will be required to install and operate lead monitors at these sources, demonstrate actual emissions are less than 0.50 tpy based on the more current emissions or improved emission estimates, or request a waiver if they can demonstrate that the impact for the source will not contribute to ambient lead concentrations in excess of 50 percent of the lead NAAQS (as allowed for under 40 CFR part 58 appendix D, paragraph 4.5(a)(ii)).

V. Monitoring at Airport Facilities

We are maintaining a lead emission threshold for airports of 1.0 tpy, and are requiring a monitoring study at 15 airports with lead emission inventories of 0.50 to 1.0 tpy that we have identified as having characteristics that may cause or contribute to ambient lead concentrations that approach or exceed the lead NAAQS. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale.

A. What We Proposed for Airport Monitoring

We proposed to lower the emission threshold for airport monitoring from 1.0 tpy to 0.50 tpy. We explained that we had limited information on the ambient lead impact from airports. We identified one study conducted near the Santa Monica airport which measured a maximum 3-month average lead concentration of 0.1 $\mu g/m^3$ near the runway blast fence (Cavender, 2009a). Based on the 2002 lead emission estimate for the Santa Monica airport of 0.4 tpy (USEPA, 2008), an estimated site-specific emission threshold of 0.6 tpy was calculated using the same procedures used to estimate a site-specific emission threshold for industrial sources [i.e., 0.15 $\mu g/m^3$/(0.1 $\mu g/m^3$/0.4 tpy) = 0.6 tpy]. We noted that this site-specific emission threshold (0.6 tpy) falls within the lower end of the range of specific emission thresholds calculated for industrial sources above (0.32 to 4.9 tpy) and did not support the case for different treatment of airports. As such, we proposed to require monitoring at airports that had an estimated emission rate of 0.50 or more tpy (or request a monitoring waiver as allowed under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)).

We also requested information on additional data that could be used in setting a different emission threshold for airports, and comments on whether we should consider other factors or criteria that might be useful in determining whether a different approach is appropriate for identifying those airports that have the potential to cause or contribute to ambient lead concentrations approaching or exceeding the lead NAAQS. We provided one example of an alternative where we could require monitoring at airports that EPA determines have the potential to cause or contribute to increased ambient lead concentrations approaching or exceeding the NAAQS based on criteria including the estimated lead emissions and other factors such as the number of runways where piston-engine aircraft operate.

B. Comments Received on Monitoring at Airports

We received 16 comments on our proposal to lower the emission threshold for airport monitoring to 0.50 tpy. Of these, two commenters (on behalf of 21 organizations and three individuals) supported the proposed lowering of the emission threshold, and nine did not support the change. Five additional commenters provided input and advice for improving the emission inventories for airports. The following paragraphs summarize the significant comments received and our responses to these comments.

NRDC, on behalf of itself, 20 additional organizations and two individuals, supported the change to a 0.50 tpy emission threshold for airports, stating that the available evidence supports a 0.50 tpy monitoring threshold for airports. NRDC also stated that because piston-engine powered aircraft continue to be a significant presence at general aviation airports, these airports continue to be a source of lead emissions with the potential to result in lead concentrations in exceedence of the NAAQS, and that there is no evidence to support a departure from the monitoring threshold for industrial sources.

Based on the limited available ambient lead concentration data near airports, we agree that lead emissions from some airports have the potential to cause or contribute to exceedances of the lead NAAQS, and that lead monitoring of airports is necessary to ensure compliance with the lead NAAQS. To identify airports that have the greatest potential to cause or contribute to increased ambient lead concentrations approaching or violating the NAAQS, we are applying a 0.50 tpy emission threshold and additional criteria as described further below in the discussion of the airport monitoring study.

A number of States and State organizations commented against the use of a 0.50 tpy emission threshold for airports. NACAA urged EPA to develop an airport monitoring study of general aviation airports emitting more than 1.0 tpy of lead prior to the deployment of a full airport monitoring program. NACAA claimed that a study is necessary in order to determine sound sampling siting criteria and to evaluate whether the 0.50 tpy threshold should be applicable to airports. NESCAUM commented that a 0.50 tpy threshold is not appropriate for NAAQS monitoring purposes at general aviation airports, arguing that the airport study cited in the **Federal Register** (74 FR 69054) does not support the need for lowering the monitoring threshold for general aviation airports. NESCAUM claims the study indicates that neither the Santa Monica nor the Van Nuys airports showed lead concentrations higher than the Los Angeles basin average of 0.018 $\mu g/m^3$ at sites beyond the airport property. NESCAUM recommended that the monitoring threshold for general aviation airport lead monitoring remain at 1.0 tpy. NESCAUM noted that based on the draft 2008 NEI, a 1.0 tpy threshold would require monitoring at the eight largest general aviation airports. NESCAUM suggests that EPA reassess the need for additional lead monitoring at smaller general aviation airports in a future rulemaking based on information gathered from monitoring of the airports that emit 1.0 tpy or more. The State of New York also commented that the emission threshold for airports should remain at 1.0 tpy and that the data obtained from these airports should be used to assess the need for additional monitoring at airports. Other States, including Florida, Michigan, and North Carolina, suggested that an airport monitoring study should be conducted to gain information on the potential for airports to exceed the lead NAAQS.

In response, we agree that there is limited information available on which to evaluate the potential for lead emissions from piston-engine aircraft operations at airports to exceed or contribute to exceedances of the lead NAAQS. However, we believe that lead

[6] Note the 2008 NEI will be available before monitoring agencies will be required to develop their revised lead monitoring plans.

emissions from piston-engine aircraft operations at airports may cause ambient lead concentrations to exceed the lead NAAQS at some airports based on the limited data available on ambient lead concentrations at and near airports. We also agree with the commenters that an airport monitoring study would provide useful information that could be used to determine whether a revision to the 1.0 tpy threshold for monitoring of airports would be appropriate.

A number of States asserted that monitoring should not be required at airports because States do not have the authority to require controls on aircraft emissions that are not identical to EPA's standards, and regulatory authority to reduce or eliminate lead emissions from piston-engine aircraft resides with the Federal Government. We understand States are preempted by Clean Air Act (CAA) section 233 from adopting or attempting to enforce any standard for aircraft or aircraft engine emissions that is not identical to an EPA standard. However, that does not negate the responsibility to monitor sources of criteria pollutants to identify whether exceedences of the NAAQS are occurring.

EPA has made some designations under the 2008 Lead NAAQS and anticipates making the remaining initial designations under that standard by October 2011. EPA does not anticipate that the additional monitors required under this rule would be installed and operating in time to provide data for consideration when EPA completes the remaining initial designations under the 2008 Lead NAAQS. If EPA receives monitoring data exceeding the NAAQS after the date of initial designations, EPA may determine whether to undertake a redesignation to nonattainment, issue a "SIP Call" under section 110(k)(5), or take other discretionary steps to ensure that an area attains and maintains the NAAQS. EPA recognizes that, if ambient air near an airport was found to be exceeding the standard, and EPA were to take such discretionary action, there would be limits under federal law as to the measures a state could propose to adopt in a state implementation plan. EPA may take such limits into consideration in determining what steps to take following an exceedance of the standard.

Separate from this Pb monitoring rule, EPA is responding to a petition submitted by Friends of the Earth (FOE) requesting that EPA determine whether Pb emissions from aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. As part of this work, EPA published in April 2010 an Advance Notice of Proposed Rulemaking (ANPR) on Lead Emissions from Piston-Engine Aircraft Using Leaded Aviation Gasoline. In this action we described and requested comment on the data available for evaluating lead emissions, ambient concentrations and potential exposure to lead from the use of leaded aviation gasoline (avgas) in piston-engine powered aircraft. This ANPR also described considerations regarding emission engine standards and requested comment on approaches for transitioning the piston-engine fleet to unleaded avgas. The EPA and FAA are working with industry to evaluate alternatives to leaded avgas. As part of this assessment, EPA and FAA are also considering safety, fuel supply, and economic impact issues including effects on small business.

C. Final Decision on Airport Monitoring

We are maintaining the previously promulgated 1.0 tpy monitoring threshold for airports, rather than promulgating the proposed lowering of the threshold to 0.50 tpy, and are requiring lead monitoring for a minimum of one year at 15 additional airports that we have identified as having characteristics that could lead to ambient lead concentrations approaching or exceeding the lead NAAQS. We are also revising the provision regarding the Regional Administrator's (RA) authority (40 CFR part 58, Appendix D, paragraph 4.5(c)), which allows the RA to require additional lead monitoring at locations where the RA suspects the lead NAAQS may be exceeded, to clarify that this RA authority also applies to airports. The following paragraphs provide our rationale for this approach to monitoring of ambient lead concentrations at airports.

As stated above and in the proposal to this rulemaking, we believe that lead emissions may approach or exceed the lead NAAQS at some airports based on the limited data available on ambient lead concentrations at airports. As such, we believe monitoring of airports is necessary. However, in light of the limited available data, and in consideration of the comments we have received, we believe that monitoring at airports with certain characteristics (as discussed below) is appropriate to identify airports with the potential for the highest ambient lead concentrations that could approach or exceed the lead NAAQS.

We agree with the comments that a monitoring study should be conducted to determine whether a revision to the 1.0 tpy threshold for monitoring airports would be appropriate. We do not agree with the comments that suggested the study should be limited to airports that emit 1.0 tpy or more, as airports emitting 1.0 tpy or more of lead often have much larger footprints and multiple runways (characteristics that we believe will result in lower ambient lead concentration impacts per ton of lead emitted) than many of the airports in the 0.50 tpy to 1.0 tpy emissions range. These differences would make the information gathered at 1.0 tpy airports less applicable to smaller airports. Consequently, we are requiring monitoring agencies to conduct monitoring at 15 selected airports where the most recent year of activity data indicates lead emissions are above 0.50 tpy, but below 1.0 tpy, for a minimum of one year as part of a monitoring study (Hoyer, 2010).[7] Details of the monitoring study are provided below. Table 5 lists the 15 selected airports for this monitoring study.

TABLE 5—AIRPORTS SELECTED FOR MONITORING STUDY

Airport	County	State
Merrill Field	Anchorage	AK
Pryor Field Regional	Limestone	AL
Palo Alto Airport of Santa Clara County	Santa Clara	CA
McClellan-Palomar	San Diego	CA
Reid-Hillview	Santa Clara	CA
Gillespie Field	San Diego	CA
San Carlos	San Mateo	CA

[7] Airports selected for the monitoring study must conduct ambient lead monitoring for the 12-month period of the study. Unlike other source-oriented lead monitors, the waiver provision will not apply to the short-term monitors in the airport monitoring study.

TABLE 5—AIRPORTS SELECTED FOR MONITORING STUDY—Continued

Airport	County	State
Nantucket Memorial	Nantucket	MA
Oakland County International	Oakland	MI
Republic	Suffolk	NY
Brookhaven	Suffolk	NY
Stinson Municipal	Bexar	TX
Northwest Regional	Denton	TX
Harvey Field	Snohomish	WA
Auburn Municipal	King	WA

These airports were selected because they have characteristics that we believe will result in lead concentrations higher than those at other airports with estimated emission rates between 0.50 tpy and 1.0 tpy. Specifically, in addition to having emissions greater than or equal to 0.50 tpy and less than 1.0 tpy (based on current emission inventories), these airports have ambient air within 150 meters of the location of maximum emissions (*e.g.,* the end of a runway or run-up location), and an airport configuration and meteorological scenario that leads to a greater frequency of operations from one runway. These characteristics were selected because we expect that, collectively, they allow us to identify airports with the highest potential to have ambient lead concentrations approaching or exceeding the lead NAAQS. A cutoff of 0.50 tpy was selected because it was the proposed emission threshold, and the higher the emission rate, the higher the ambient impact if all other factors are equal. We selected a maximum distance to ambient air from the location of maximum emissions of 150 meters because the available information indicates that ambient lead concentrations drop off quickly with distance, and it is less likely that an exceedence of the lead NAAQS will occur at greater distances. Finally, airport configuration and meteorology were evaluated because the lead impacts will be highest if the take-offs (and therefore lead emissions) are conducted at one or two runways. We evaluated every airport in the draft 2008 NEI based on these three characteristics and identified the 15 airports listed in Table 5 as those airports most likely to have the highest ambient lead impacts that could lead to ambient lead concentrations in excess of the lead NAAQS.

As part of the airport monitoring study, monitoring agencies will be required to conduct lead monitoring for a period of 12 consecutive months. Monitors will be sited at the location of estimated maximum lead concentration in ambient air, taking into account logistical considerations and the potential for population exposure. To ensure that the results of the study will be directly comparable to the lead NAAQS, monitoring agencies will be required to monitor using either Federal Reference Method (FRM) or Federal Equivalent Method (FEM) Pb-TSP samplers, and will not be allowed to use Pb-PM_{10} samplers for the study. Any monitoring location that measures a rolling 3-month average that exceeds 50 percent of the NAAQS as determined according to 40 CFR part 50, Appendix R during the monitoring study will become a required monitor according to 40 CFR part 58 paragraph 4.5(c). Data collected during the monitoring study will be reported to the AQS according to 40 CFR 58.16.

Data from this monitoring study will be used to assess the need for additional lead monitoring at airports. Under EPA's previously established monitoring network requirements, required source-oriented monitors that read above 50 percent of the NAAQS (0.075 $\mu g/m^3$ on a rolling 3-month average) may not be taken down or stop operating (40 CFR part 58 Appendix D, paragraph 4.5(a)(ii)). The purpose of that provision is to ensure monitoring of an area where ambient concentrations could be of concern. EPA continues to believe that this rationale is also applicable to monitors at airports; therefore, 40 CFR part 58 Appendix D, paragraph 4.5(a)(ii) will apply to the results of airport monitors that show concentrations higher than 50 percent of the NAAQS. Such monitors will remain in operation, affected States will include them in annual monitoring network plans, and the monitors will become a part of the State and local monitoring network.

If after a review of the data from the monitoring study we have information that indicates additional airports may have the potential to cause or contribute to ambient lead concentrations that exceed the lead NAAQS, we will consider use of the RA authority to require monitoring at additional airports where appropriate. Finally, data from this study will be used in future lead NAAQS reviews when considering requirements for monitoring at airports.

VI. Non-Source-Oriented Monitoring Requirements

We are revising the non-source-oriented lead monitoring requirements. We are requiring lead monitoring at NCore sites in CBSA with a population greater than 500,000 people in lieu of the requirement for non-source-oriented monitoring in each CBSA with a population of 500,000 people or more. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale for the revisions to the non-source-oriented monitoring requirement.

A. What We Proposed for Non-Source Oriented Monitoring

We proposed to replace the existing requirement to have one non-source-oriented monitor in each CBSA with a population greater than 500,000 people with the requirement to monitor lead at NCore sites. We indicated that the existing requirement was intended to monitor non-inventoried lead sources such as closed industrial sources, hazardous waste sites, and construction and demolition projects. We noted that non-inventoried sources would be better addressed under the existing source-oriented monitoring requirements, and that the existing RA authority could be used to require source-oriented monitoring at locations where it was suspected that a non-inventoried source was likely to cause an exceedence of the lead NAAQS.

We discussed the original objectives for non-source-oriented monitors (*i.e.,* measuring typical neighborhood-scale lead concentrations in urban areas so we can better understand the risk posed by lead to the general population and provide information that could assist with the determination of nonattainment boundaries) and that non-source-oriented sites are important to support the development of long-term

trends at typical concentrations sites. We noted that these objectives match those of the multi-pollutant NCore network required under section 3 of Appendix D to 40 CFR part 58. We also noted that many NCore sites will have the low-volume PM_{10} sampler appropriate for conducting Pb-PM_{10} monitoring, reducing the cost and time necessary to implement the non-source-oriented monitoring requirements. Due to the many advantages of including lead monitoring at NCore sites rather than having separate non-source-oriented monitoring requirements, we proposed to revise the existing non-source-oriented monitoring requirements (paragraph 4.5(b) of Appendix D to 40 CFR part 58) to require lead monitoring at all NCore sites in place of the current CBSA population-based requirements. Finally, we requested comments on whether lead monitoring should be required at all NCore sites or only NCore sites in large urban areas (*e.g.,* in CBSA with a population greater than 500,000 people).

B. Comments on Non-Source-Oriented Monitoring

We received 13 comments on our proposal to require lead monitoring at NCore sites instead of the existing requirement to have one non-source-oriented monitor in each CBSA with a population greater than 500,000 people. Of these, three supported the proposed change to require lead monitoring at all NCore sites, six supported changing the requirement to require lead monitoring at only urban NCore sites, and no comments supported maintaining the existing non-source-oriented monitoring requirement. In addition, two commenters requested we provide guidance on when the RA authority should be used to require monitoring at non-inventoried lead sources. The following paragraphs summarize the significant comments received and our responses to these comments.

In their comments, NACAA supported the proposal to conduct non-source-oriented lead monitoring using the NCore network but recommended that EPA require monitoring only at NCore sites located in larger urban areas (*i.e.,* CBSA with a population greater than 500,000). NACAA indicated that doing so would allow States to use their limited resources to focus non-source-oriented monitoring and control strategies in the most sensitive areas. NESCAUM commented that the proposed inclusion of the rural NCore sites is inconsistent with the monitoring goal and would be a waste of State resources. New York commented that in many CBSA, the tentatively approved NCore monitoring location is probably well suited for non-source-oriented monitoring objectives, but that there is no need to monitor lead at the rural NCore sites. North Carolina commented that using the NCore sites provides efficient use of EPA and State resources and provides data on background levels of lead most cost-effectively. Wisconsin supported population-oriented sites located at urban NCore locations and questioned monitoring at rural NCore sites where concentrations likely will be extremely low.

In their comments, NRDC supported the inclusion of lead at all NCore sites stating that it will provide valuable data on multi-pollutant exposures in cities and towns across the county. However, they added that inclusion of lead at NCore sites does not sufficiently address all of the original objectives of the non-source-oriented monitoring, and that the RA authority is not adequate to ensure that non-inventoried sources that have the potential to exceed the NAAQS will be monitored without additional guidance to the States. They suggested that the source-oriented monitoring requirement should be revised to provide additional guidance to States on monitoring non-inventoried sources that have the potential to exceed the NAAQS. We agree that additional guidance is needed on identifying locations that have the potential to exceed the lead NAAQS due to re-suspension of deposited lead and, as discussed below, are clarifying the language for the RA authority provision to include requiring monitoring of re-entrained dust sources as well as other sources of lead.

Several commenters suggested we provide for the use of alternative sites such as National Air Toxic Trends Sites (NATTS) where measuring lead at NCore is either impractical or the alternative site would provide more useful information on urban lead concentrations. We note that lead measurements taken at NATTS sites would satisfy the objectives for non-source-oriented monitoring. Furthermore, we proposed to require lead non-source-oriented monitoring at NCore in part due to expected efficiencies (*i.e.,* use of the same equipment needed for $PM_{10-2.5}$ mass measurements). We believe that the requested flexibility is appropriate for situations where non-NCore sites such as NATTS sites can meet the non-source-oriented monitoring objectives at a lower cost to monitoring agencies.[8]

Two commenters noted that the non-source-oriented lead monitoring sites will be the only lead monitoring site in many primary quality assurance organizations (PQAO). The collocation requirement in Appendix A to 40 CFR part 58, paragraph 3.3.4.3, would require these PQAO to collocate a second lead monitor at each of the non-source-oriented lead monitoring sites, nearly doubling the cost of non-source-oriented lead monitoring in these CBSA. Both commenters questioned the need for such extensive collocation when lead concentrations are expected to be well below the lead NAAQS at the non-source-oriented lead monitoring sites. We agree with the commenters that, as currently written, the collocation requirement would lead to an unnecessarily high level of collocation at the non-source-oriented monitoring sites. We have modified the quality assurance requirements to allow the 15 percent collocation requirement to be based on the entire NCore network rather than on a per PQAO basis which is consistent with the $PM_{10-2.5}$ collocation requirement for NCore sites.

C. Final Decision on Non-Source-Oriented Monitoring

We are adding the requirement for lead monitoring to the list of pollutants to be monitored for NCore sites in CBSA with a population of 500,000 people or more and revoking the existing requirement for non-source-oriented monitoring (40 CFR part 58, Appendix D, paragraph 4.5(b)). Also, we are revoking the existing requirement to conduct lead monitoring at 10 NCore sites because it is redundant to the new non-source-monitoring requirement being promulgated today (40 CFR part 58, Appendix D, paragraph 3(c)). This change will improve our ability to track changes in typical urban lead concentrations and provide useful information on typical urban lead exposures. In addition, we are revising the RA authority (40 CFR part 58, Appendix D, paragraph 4.5(c)) provision to clarify that the RA may require monitoring of re-entrained lead dust sources which are expected to cause or contribute to ambient lead concentrations that may approach or exceed the lead NAAQS. Finally, we are revising the 15 percent collocation requirement for non-source-oriented lead monitors to be based on the entire NCore network rather than based on each PQAO.

[8] Note that some NATTS sites do not use FRM/FEM methods. If a NATTS site is to be used to meet the non-source-oriented monitoring requirement, the monitoring agency would be required to switch to an FRM/FEM method.

VII. Monitor Deployment Schedule

We are requiring that monitoring agencies install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more but less than 1.0 tpy, and at the 15 airports identified for the airport monitoring study by December 27, 2011. We are requiring monitoring agencies to install and begin operation of non-source-oriented monitors at NCore sites (or approved alternative sites) in CBSA with a population of 500,000 people or more by December 27, 2011. We are also requiring that monitoring agencies update their annual monitoring network plans by July 1, 2011, to incorporate plans for all required source-oriented (including airports) and non-source-oriented lead monitors. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale for the final monitoring deployment schedule.

A. What We Proposed for Monitor Deployment Schedule

We proposed that monitoring agencies would have six months from the effective date of the final rule to update their annual monitoring network plans. The update would incorporate plans for source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy. We also proposed to allow one year from the date of the final rule for monitoring agencies to install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy. We also requested comment on staggering the monitor deployment over two years. Note, we did not propose changes to the existing schedules for updating plans (July 1, 2009) and beginning operation (January 1, 2010) of source-oriented monitors near lead sources emitting 1.0 tpy or more.

We proposed to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational no later than January 1, 2011. Monitoring agencies must have installed and begun operation of required NCore sites and monitors (other than lead) by January 1, 2011. Many NCore sites will have the necessary PM_{10} sampler needed to conduct Pb-PM_{10} sampling due to the existing requirement to conduct $PM_{10-2.5}$ sampling. As such, we proposed to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational no later than January 1, 2011.

B. Comments on Monitor Deployment Schedule

We received several comments on the proposed monitoring deployment schedule. Seven commenters supported allowing for a longer deployment period. NACAA recommended that States' new source-oriented monitoring be deployed over a two year period which would give State and local agencies adequate time to adjust their resources and ensure that new monitors are properly sited and supported. Iowa commented that any new source-oriented monitors required under the provisions of this rule should be installed over a two year period, with the first tier of source-oriented monitors operational by January 2012, and the second tier of monitors by January 2013. Iowa states that this would allow States adequate time to refine emissions estimates by use of stack tests, to model the refined estimates, and to attempt to locate monitoring sites in the "hot spots" indentified by the modeling. Other monitoring agencies requesting a deployment period longer than one year include Texas, New York, Illinois, and Arkansas.

We recognize the difficulty monitoring agencies will have in deploying the newly required monitors. However, as is discussed below, we believe it is feasible for monitoring agencies to deploy the monitors necessary to comply with this final rule within one year. We note that the estimated number of new sites that States will need to site and install (or receive waivers for) in this final rule is 111,[9] which is 50 less than the number estimated based on the proposed rule. Following the 2008 revision, monitoring agencies were able to install approximately 100 new lead sites, and were granted waivers for an additional 35 sites. Based on the success and the experience gained from the deployment of the monitors to address the 2008 revision, we believe requiring up to 111 new sites to be sited and installed within one year will not create an excessive burden on monitoring agencies.

One commenter requested that we synchronize the dates of the required revision to the lead monitoring plan with the date for the existing annual monitoring plan requirement. We recognize the efficiency of having the same dates for the revision to the lead monitoring plan and required annual monitoring plan. We also note that due to the timing of this final rule, the proposed deadline of 6-months following the final rule (June 27, 2011) is close to the deadline for the required 2011 annual monitoring network plans (July 1, 2011). We agree that it is appropriate to use the same date for the two plans due to the proximity of the two dates.

Several commenters noted a discrepancy in the required dates in the preamble to the proposed rule and the proposed regulatory language. We note that the proposed regulatory language published in the **Federal Register** inadvertently indicated dates for the required plan and installation and operation of new monitors based on the date of the proposed rule. The preamble correctly indicated that the proposed dates would be based on the date the final rule was published.

C. Final Decision on Monitoring Deployment Schedule

We are requiring that monitoring agencies install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more but less than 1.0 tpy and at the 15 airports identified for the airport monitoring study by December 27, 2011, one year from the date of publication of this final rule. We estimate that monitoring agencies will be required to site and install up to 111 new source-oriented monitors[10] based on the final monitoring requirements. This number is slightly higher than the 100 monitors that have already been installed near sources emitting 1.0 tpy or more. We believe monitoring agencies can install the newly required source-oriented-monitoring sites within one year of the publication of this final rule especially in light of the experience and success achieved by monitoring agencies in complying with the previous source-oriented-monitoring requirement.

We are requiring monitoring agencies to install and begin operation of non-source-oriented monitors at NCore sites in CBSA with a population of 500,000 people or more by December 27, 2011. To allow monitoring agencies sufficient time to plan for and install any necessary equipment, we are allowing monitoring agencies a reasonable time, 1 year, from the time of publication of this final rule to comply with the non-source-oriented monitoring requirements.

We are also requiring that monitoring agencies update their annual monitoring

[9] The total number of newly required lead sites is 174. However, this number includes 63 NCore sites which have already been sited and installed due to the existing requirements for installing and operating NCore sites.

[10] The total number of new source oriented sites installed will likely be less as this estimate does not account for waivers.

network plans by July 1, 2011, to incorporate plans for all required source-oriented (including airports) and non-source-oriented lead monitoring. This date is the same as the existing requirement for States to submit their 2011 annual monitoring plan as required by 40 CFR Part 58.10(a)(i).

VIII. References

Cavender, K. (2008). Development of Final Source-oriented Monitoring Emission Threshold. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735. Available online at: *http://www.epa.gov/ttnnaaqs/standards/lead/data/20081015Cavender.pdf.*

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U.S. Environmental Protection Agency. (2008) Lead Emissions from the Use of Leaded Aviation Gasoline in the United States. EPA420–R–08–020. Available online at: *http://www.epa.gov/ttn/chief/net/tsd_avgas_lead_inventory_2002.pdf.*

White, J. (2010). Environmental Justice Analysis for Revisions to Lead Monitoring Requirements. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735.

IX. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2011. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it was deemed to "raise novel legal or policy issues." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health and ecosystem impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The final amendments revise the technical requirements for lead monitoring sites, require the siting and operation of additional lead ambient air monitors, and the reporting of the collected ambient lead monitoring data to EPA's AQS database. We have estimated the burden based on the final monitoring requirements of this rule. Based on these requirements, the annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this Information Collection Request(ICR)) for 100 respondents is estimated to increase by a total of 1,726 labor hours per year with an increase of $119,172 per year. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) regulations at 13 CFR 121.21; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule establishes monitoring requirements for State and local (where applicable) monitoring agencies.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendments to 40 CFR part 58 are estimated to increase the ambient air monitoring costs by 22,376 labor hours per year with an increase of $1,910,059 per year from present levels. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments that may be affected by the amendments are already meeting similar requirements under the existing rules, and the costs of changing the network design requirements would be borne, in part, by the federal government through State assistance grants.

E. Executive Order 13132: Federalism

This final rule 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. The rule does not alter the relationship between the federal government and the States

regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed rule from state and local officials.

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). It does not have a substantial direct effect on one or more Indian tribes, since tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule would result in an insignificant increase in power consumption associated with the additional power required to run 111 additional lead monitors nationwide.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This proposed action revises the ambient monitoring requirements for measuring airborne lead. As such, the rule does not establish an environmental standard. Instead, by lowering the emissions threshold from 1.0 tons per year (tpy) to 0.5 tpy used to determine if an air quality monitor for lead should be placed near an industrial facility, this rule requires assessment of compliance at smaller emissions sources, and therefore effectively strengthens the lead monitoring requirements and, in turn, may increase the public health protection provided by the NAAQS itself. The rule maintains a 1.0 tpy emissions threshold for airports and implements an airport monitoring study to determine the need for monitoring of airports which emit less than 1.0 tpy of lead. The rule also replaces the existing non-source-oriented monitoring requirement for lead monitoring in large urban areas with a requirement that lead be added to the list of pollutants to be monitored at NCore sites in CBSA with a population of 500,000 people or more. These rule amendments are designed to improve the lead monitoring network's capability to better assess compliance with the revised NAAQS (73 FR 66964, codified at 40 CFR part 58).

Pursuant to E.O. 12898 EPA has undertaken to determine the aggregate demographic makeup of the communities potentially affected by this proposed rule revision. The EPA focused its analysis on 111 industrial sources of lead (*e.g.,* lead smelters, and foundries) impacted by the lowering of the emissions threshold from 1.0 tpy to 0.5 tpy. The analytical approach, which assumed "proximity-to-a-source" as a surrogate for determining a population's potential exposure to lead emissions from these sources, evaluated several socio-demographic parameters and compared them against the respective national averages for the same parameters.

The socio-demographic parameters used in the analysis included estimates of the percentage of the population near the sources that were White, Minority (*i.e.,* all Non-White), African American, Native American, Other/Multiracial, and Hispanic. The study also evaluated the percentages of the same populations less than or equal to 18 years of age; greater than or equal to 65 years of age; and the total below poverty line.

The analysis determined the composition of those census blocks that lay within a circular distance of one mile (or approximately 1.6 kilometers) of affected sources with respect to the selected socio-demographic parameters. The study area radius (*i.e.,* 1 mile) was used because available data generally indicate that lead emissions from such sources are rapidly deposited and ambient lead concentrations decline quickly with distance from the emission source.

The analysis indicated that the aggregate population living within a one-mile area around these sources tends to have lower proportions of Whites and higher proportions of African-Americans, Hispanics, and "Other and Multi-racial" populations than their respective national averages. The Minority (*i.e.,* total Non-White) population in these areas is greater than the national average (*i.e.,* 29% versus 25% respectively). The Tribal population percentages are similar for both those living within the study area and the national average (*i.e.,* both < 1%). The percentage of the population of those living below the poverty line within the area of study is higher than the national average (*i.e.,* 17% versus 13% respectively). However, the percentage of the population less than or equal to 18 years of age and the percentage age 65 or older are similar for those within the area of study and the national average.

Based on the fact that this proposed rule does not allow emission increases, but promulgates revisions to existing monitoring requirements that lower the threshold at which monitoring by state and local monitoring agencies would be

required, the EPA has determined that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or Tribal populations. Furthermore, to the extent that any minority, low-income, or Tribal subpopulation is disproportionately impacted by current lead emissions as a result of the proximity to lead emissions sources, that group also stands to benefit from the improvement in compliance with the lead NAAQS which will result from this rule and thereby potentially experience associated increases in environmental and health benefits.

This proposed change is a "notice and comment rulemaking" and public involvement is encouraged. All monitoring changes at the local level will be documented in each state's monitoring plan and are available for public review and comment. In addition, EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To promote meaningful involvement, EPA has developed a communication and outreach strategy to ensure that interested communities have access to this proposed rule, are aware of its content, and have an opportunity to comment during the comment period. During the comment period, EPA will publicize the rulemaking via EJ newsletters, Tribal newsletters, EJ listservs, and the internet, including the Office of Policy (OP) Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). EPA will also provide general rulemaking fact sheets (*e.g.,* why is this important for my community) for EJ community groups and conduct conference calls with interested communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 26, 2011.

List of Subjects in 40 CFR Part 58

Air pollution control, Ambient air monitoring, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 14, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

■ 1. The authority citation for part 58 is revised to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619.

Subpart B—[Amended]

■ 2. Section 58.10 is amended by revising paragraph (a)(4) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(4) A plan for establishing source-oriented Pb monitoring sites in accordance with the requirements of appendix D to this part for Pb sources emitting 1.0 tpy or greater shall be submitted to the EPA Regional Administrator no later than July 1, 2009, as part of the annual network plan required in paragraph (a)(1) of this section. The plan shall provide for the required source-oriented Pb monitoring sites for Pb sources emitting 1.0 tpy or greater to be operational by January 1, 2010. A plan for establishing source-oriented Pb monitoring sites in accordance with the requirements of appendix D to this part for Pb sources emitting equal to or greater than 0.50 tpy but less than 1.0 tpy shall be submitted to the EPA Regional Administrator no later than July 1, 2011. The plan shall provide for the required source-oriented Pb monitoring sites for Pb sources emitting equal to or greater than 0.50 tpy but less than 1.0 tpy to be operational by December 27, 2011.

* * * * *

■ 3. Section 58.13 is amended by revising paragraph (a) to read as follows:

§ 58.13 Monitoring network completion.

(a) The network of NCore multipollutant sites must be physically established no later than January 1, 2011, and at that time, operating under all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part. NCore sites required to conduct Pb monitoring as required under 40 CFR part 58 appendix D paragraph 3(b), or approved alternative non-source-oriented Pb monitoring sites, shall begin Pb monitoring in accordance with all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part no later than December 27, 2011.

* * * * *

■ 4. Appendix A to Part 58 is amended by revising paragraph 3.3.4.3 to read as follows:

Appendix A to Part 58—Quality Assurance for SLAMS, SPMs, and PSD Air Monitoring

* * * * *

3.3.4.3 *Collocated Sampling.* PQAO that have a combination of source and non-source–oriented sites (unless the only non-source-oriented site is an NCore site) will follow the procedures described in sections 3.3.1 of this appendix with the exception that the first collocated Pb site selected must be the site measuring the highest Pb concentrations in the network. If the site is impractical, alternative sites, approved by the EPA Regional Administrator, may be selected. If additional collocated sites are necessary, collocated sites may be chosen that reflect average ambient air Pb concentrations in the network. The collocated sampling requirements for PQAO that only have Pb monitoring at a non-source-oriented NCore site for sampling required under 40 CFR 58, Appendix D, paragraph 4.5(b) shall be implemented as described in section 3.2.6 of this appendix with the exception that the collocated monitor will be the same method designation as the primary monitor.

* * * * *

■ 5. Appendix D to Part 58 is amended as follows:

■ a. By revising paragraph 3.(b) introductory text,

■ b. By removing and reserving paragraph 3.(c),

■ c. By revising paragraph 4.5.(a),

■ d. By revising paragraph 4.5.(b), and

■ e. By revising paragraph 4.5.(c).

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

3. * * *

(b) The NCore sites must measure, at a minimum, $PM_{2.5}$ particle mass using continuous and integrated/filter-based samplers, speciated $PM_{2.5}$, $PM_{10-2.5}$ particle mass, speciated $PM_{10-2.5}$, O_3, SO_2, CO, NO/NO_y, wind speed, wind direction, relative humidity, and ambient temperature. NCore sites in CBSA with a population of 500,000 people (as determined in the latest Census)

or greater shall also measure Pb either as Pb-TSP or Pb-PM_{10}. The EPA Regional Administrator may approve an alternative location for the Pb measurement where the alternative location would be more appropriate for logistical reasons and the measurement would provide data on typical Pb concentrations in the CBSA.

* * * * *

(c) [Reserved.]

* * * * *

4.5 * * * (a) State and, where appropriate, local agencies are required to conduct ambient air Pb monitoring near Pb sources which are expected to or have been shown to contribute to a maximum Pb concentration in ambient air in excess of the NAAQS, taking into account the logistics and potential for population exposure. At a minimum, there must be one source-oriented SLAMS site located to measure the maximum Pb concentration in ambient air resulting from each non-airport Pb source which emits 0.50 or more tons per year and from each airport which emits 1.0 or more tons per year based on either the most recent National Emission Inventory (*http://www.epa.gov/ttn/chief/eiinformation.html*) or other scientifically justifiable methods and data (such as improved emissions factors or site-specific data) taking into account logistics and the potential for population exposure.

(i) One monitor may be used to meet the requirement in paragraph 4.5(a) for all sources involved when the location of the maximum Pb concentration due to one Pb source is expected to also be impacted by Pb emissions from a nearby source (or multiple sources). This monitor must be sited, taking into account logistics and the potential for population exposure, where the Pb concentration from all sources combined is expected to be at its maximum.

(ii) The Regional Administrator may waive the requirement in paragraph 4.5(a) for monitoring near Pb sources if the State or, where appropriate, local agency can demonstrate the Pb source will not contribute to a maximum Pb concentration in ambient air in excess of 50 percent of the NAAQS (based on historical monitoring data, modeling, or other means). The waiver must be renewed once every 5 years as part of the network assessment required under § 58.10(d).

(iii) State and, where appropriate, local agencies are required to conduct ambient air Pb monitoring near each of the airports listed in Table D–3A for a period of 12 consecutive months commencing no later than December 27, 2011. Monitors shall be sited to measure the maximum Pb concentration in ambient air, taking into account logistics and the potential for population exposure, and shall use an approved Pb-TSP Federal Reference Method or Federal Equivalent Method. Any monitor that exceeds 50 percent of the Pb NAAQS on a rolling 3-month average (as determined according to 40 CFR part 50, Appendix R) shall become a required monitor under paragraph 4.5(c) of this Appendix, and shall continue to monitor for Pb unless a waiver is granted allowing it to stop operating as allowed by the provisions in paragraph 4.5(a)(ii) of this appendix. Data collected shall be submitted to the Air Quality System database according to the requirements of 40 CFR part 58.16.

TABLE D–3A AIRPORTS TO BE MONITORED FOR LEAD

Airport	County	State
Merrill Field	Anchorage	AK
Pryor Field Regional	Limestone	AL
Palo Alto Airport of Santa Clara County	Santa Clara	CA
McClellan-Palomar	San Diego	CA
Reid-Hillview	Santa Clara	CA
Gillespie Field	San Diego	CA
San Carlos	San Mateo	CA
Nantucket Memorial	Nantucket	MA
Oakland County International	Oakland	MI
Republic	Suffolk	NY
Brookhaven	Suffolk	NY
Stinson Municipal	Bexar	TX
Northwest Regional	Denton	TX
Harvey Field	Snohomish	WA
Auburn Municipal	King	WA

(b) State and, where appropriate, local agencies are required to conduct non-source-oriented Pb monitoring at each NCore site required under paragraph 3 of this appendix in a CBSA with a population of 500,000 or more.

(c) The EPA Regional Administrator may require additional monitoring beyond the minimum monitoring requirements contained in paragraphs 4.5(a) and 4.5(b) where the likelihood of Pb air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. EPA Regional Administrators may require additional monitoring at locations including, but not limited to, those near existing additional industrial sources of Pb, recently closed industrial sources of Pb, airports where piston-engine aircraft emit Pb, and other sources of re-entrained Pb dust.

* * * * *

[FR Doc. 2010–32153 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1510–CN2]

RIN 0938–AP88

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects a technical error that appeared in the November 17, 2010 **Federal Register** entitled "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final rule (75 FR 70372).

DATES: *Effective Date:* This correction is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Sharon Ventura, (410) 786–1985.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–27778 of November 17, 2010 (75 FR 70372), there was a technical error that this notice serves to identify and correct. The provisions of this notice are effective as if they had been included in the "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final

rule. Accordingly, the correction is effective January 1, 2011.

II. Summary of Errors

On page 70417, in Table 13B, the calculation of the NRS payment amounts for services provided in rural areas is incorrect. In Table 13B, we multiplied the NRS payment amounts (from Tables 8B and 9B) by the rural add-on (X 1.03). However, we should have multiplied the NRS conversion factors for rural areas (from Table 13A) by the appropriate relative weights. We are replacing Table 13B in its entirety in order to show the correct calculation of the NRS payment amounts for services provided in rural areas.

III. Correction of Errors

In FR Doc. 2010–27778 of November 17, 2010 (75 FR 70372), make the following corrections:

1. On page 70417, Table 13B is corrected to read as follows:

TABLE 13B—RELATIVE WEIGHTS FOR THE 6-SEVERITY NRS SYSTEM FOR SERVICES PROVIDED IN RURAL AREAS

Severity level	Points (scoring)	For HHAs that DO submit quality data (NRS conversion factor = 54.12)		For HHAs that DO NOT submit quality data (NRS conversion factor = 53.05)	
		Relative weight	Total NRS payment amount for rural areas	Relative weight	Total NRS payment amount for rural areas
1	0	0.2698	$14.60	0.2698	$14.31
2	1 to 14	0.9742	$52.72	0.9742	$51.68
3	15 to 27	2.6712	$144.57	2.6712	$141.71
4	28 to 48	3.9686	$214.78	3.9686	$210.53
5	49 to 98	6.1198	$331.20	6.1198	$324.66
6	99+	10.5254	$569.63	10.5254	$558.37

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides typographical and technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the CY 2011 HH PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the CY 2011 HH PPS final rule is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent typographical and technical errors. The changes noted above do not make any substantive changes to the HH PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate HH PPS payments in as timely a manner as possible and to ensure that the CY 2011 HH PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–32496 Filed 12–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2010–0064; 91200–1231–9BPP]

RIN 1018–AX31

Migratory Bird Permits; States Delegated Falconry Permitting Authority; Technical Corrections to the Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The States of Arkansas, Colorado, Idaho, Maine, Michigan, Missouri, South Dakota, and Washington have requested that we, the U.S. Fish and Wildlife Service, delegate permitting for falconry to the State, as provided under the regulations at 50 CFR 21.29. We have reviewed regulations and supporting materials provided by the States and have concluded that their regulations comply with the Federal regulations. We change the falconry regulations accordingly. We also correct or clarify several small errors in the regulations and move one section to make the regulations more consistent.

DATES: This rule is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 8, 2008 (73 FR 59448), to revise our regulations governing falconry in the United States. These regulations are found in title 50 of the Code of Federal Regulations (CFR) at § 21.29. The regulations provide that, when a State meets the requirements for operating under the regulations, falconry permitting must be delegated to the State.

The States of Arkansas, Colorado, Idaho, Maine, Michigan, Missouri, South Dakota, and Washington have submitted revised falconry regulations and supporting materials and have requested to be allowed to operate under the revised Federal regulations. We have reviewed the regulations administered by these States and have determined that their regulations meet the requirements of 50 CFR 21.29(b). According to the regulations at § 21.29(b)(4), we must issue a rule to add a State to the list at § 21.29(b)(10) of approved States with a falconry program. Therefore, we change the Federal regulations accordingly, and a Federal permit will no longer be required to practice falconry in the States of Arkansas, Colorado, Idaho, Maine, Michigan, Missouri, South Dakota, and Washington beginning January 1, 2011.

We also make several nonsubstantive corrections and improvements to the falconry regulations in 50 CFR 21.29. In paragraph (d)(9), we add a paragraph heading for consistency with the other subordinate paragraphs in paragraph (d), which all have headings. We correct an incorrect reference in paragraph (e)(6)(ii). Finally, we remove redundant subparagraphs from paragraphs (e)(2) and (e)(3): The same text appears at both of these locations. We are removing this text from both of these locations and moving it to a more logical location in paragraph (c)(3)(i) in a new paragraph (E). The information in this text pertains to the possession of raptors by Apprentice Falconers, and we believe this information fits better with other information about the possession options for Apprentice Falconers presented in paragraph (c) than it does in either of its current locations in paragraph (e) of the regulations.

Administrative Procedure

In accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), we are issuing this final rule without prior opportunity for public comment. Under the regulations at 50 CFR 21.29(b)(1)(ii), the Director of the U.S. Fish and Wildlife Service must determine if a State, tribal, or territorial falconry permitting program meets Federal requirements. When the Director makes this determination, the Service is required by regulations at 50 CFR 21.29(b)(4) to publish a rule in the **Federal Register** adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. On January 1st of the calendar year following publication of the rule, the Service will terminate Federal falconry permitting in any State certified under the regulations at 50 CFR 21.29.

This is a ministerial and nondiscretionary action that must be enacted shortly to enable the subject States to assume all responsibilities of falconry permitting by January 1, 2011, the effective date of this regulatory amendment. Further, the relevant regulation at 50 CFR 21.29 governing the transfer of permitting authority to these States has already been subject to public notice and comment procedures. Therefore, in accordance with 5 U.S.C. 553(b)(3)(B), we did not publish a proposed rule in regard to this rulemaking action because, for good cause as stated above, we found prior public notice and comment procedures to be unnecessary. In addition, per 5 U.S.C. 553(d)(1), we are making this rule effective in less than 30 days because this rule relieves a restriction: It relinquishes Federal control of the falconry permitting program to the approved States.

Required Determinations

Regulatory Planning and Review

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:

a. 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.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to 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 effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule 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 the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This rule delegates authority to States that have requested it, and those States have already changed their falconry regulations. This rule does not change falconers' costs for practicing their sport, nor does it affect businesses that provide equipment or supplies for falconry. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with this regulations change.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither

regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments in a negative way. A small government agency plan is not required. The eight States affected by this rule applied for the authority to issue permits for the practice of falconry.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. The States being delegated authority to issue permits to conduct falconry have requested that authority. No significant economic impacts are expected to result from the State regulation of falconry.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2013. This regulation change does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for falconry between permittees. A Federal 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

We evaluated the environmental impacts of the changes to these regulations, and determined that this rule does not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 2, we conclude that the regulatory changes are categorically excluded because they "have no or minor potential environmental impact" (516 DM 2, Appendix 1A(1)). No more comprehensive NEPA analysis of the regulations change is required.

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, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Action

Socioeconomic. This action will not have discernible socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations. We have reviewed and approved the State regulations.

Endangered and threatened species. This rule does not change protections for endangered and threatened species.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). Delegating falconry permitting authority to States with approved programs will not affect threatened or endangered species or their habitats in the United States.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend subpart C of part 21, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Amend § 21.29 by:

■ a. Amending paragraph (b)(10)(i) by removing the word "or" from the first column and adding in alphabetic order to the list of States the words "Arkansas," "Colorado," "Idaho," "Maine," "Michigan," "Missouri," "South Dakota," and "or Washington,";

■ b. Amending paragraph (b)(10)(ii) by removing the words "Arkansas," "Colorado," "Idaho," "Maine," "Michigan," "Missouri," "South Dakota," and "Washington,";

■ c. Redesignating paragraphs (c)(3)(i)(E) through (c)(3)(i)(I) as paragraphs (c)(3)(i)(F) through (c)(3)(i)(J) and adding a new paragraph (c)(3)(i)(E) to read as set forth below;

■ d. Amending paragraph (d)(9) by adding a paragraph heading to read as set forth below;

■ e. Removing the second paragraph designated as paragraph (e)(2)(i);

■ f. Removing paragraph (e)(3)(i) and redesignating paragraphs (e)(3)(ii) through (e)(3)(x) as paragraphs (e)(3)(i) through (e)(3)(ix); and

■ g. Amending paragraph (e)(6)(ii) by removing the reference "(e)(3)(iii)(C)" and adding in its place "(e)(3)(ii)(E)."

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) You may take raptors less than 1 year old, except nestlings, from the wild during any period or periods specified by the State, tribe, or territory. You may take any raptor species from the wild except a federally listed threatened or endangered species or the following species: Bald eagle *(Haliaeetus leucocephalus),* white-tailed eagle *(Haliaeetus albicilla),* Steller's sea-eagle *(Haliaeetus pelagicus),* golden eagle *(Aquila chrysaetos),* American swallow-tailed kite *(Elanoides forficatus),* Swainson's hawk *(Buteo swainsoni),* peregrine falcon *(Falco peregrinus),* flammulated owl *(Otus flammeolus),* elf owl *(Micrathene whitneyi),* and short-eared owl *(Asio flammeus).*

* * * * *

(d) * * *

(9) *Inspections.* * * *

* * * * *

Dated: December 14, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–32243 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101013504–0610–02]

RIN 0648–XY27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Final 2011–2013 Fishing Quotas for Atlantic Surfclam and Ocean Quahog

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

ACTION: Final rule.

SUMMARY: NMFS implements final quotas for the Atlantic surfclam and ocean quahog fisheries for 2011, 2012, and 2013. Regulations governing these fisheries require NMFS to publish the final quota specifications for the 2011–2013 fishing years. The intent of this action is to establish allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone to prevent overfishing and to allow harvesting of optimum yield (OY).

DATES: Effective January 1, 2011, to December 31, 2013.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available from Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State St., Dover, DE 19901. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html.*

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA and the summary of impacts and alternatives contained in the Classification section of the preamble to this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, 978–281–9165.

SUPPLEMENTARY INFORMATION: The fishery management plan (FMP) for Atlantic surfclams and ocean quahogs requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclam and ocean quahog for a 3-year period, with an annual review, from a range that represents the OY for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams, and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as Maine mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat., with an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation, is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In recommending these quotas, the Council considered the most recent stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

In June 2010, the Council voted to recommend maintaining the 2010 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery for 2011–2013. The basis for the Council's quota recommendations was provided in the proposed rule published on October 25, 2010 (75 FR 65442), and is not repeated here.

With this rule, NMFS approves and implements the quotas proposed by the Council. The final quotas for the 2011–2013 Atlantic surfclam and ocean quahog fishery are shown in the table below. The Atlantic surfclam and ocean quahog quotas are specified in "industry" bu of 53.24 L per bu, while the Maine ocean quahog quota is specified in "Maine" bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

FINAL 2011–2013 ATLANTIC SURFCLAM AND OCEAN QUAHOG [1] QUOTAS

	2011		2012		2013	
	bu	hL	bu	hL	bu	hL
Surfclams [2]	3.400	1.810	3.400	1.810	3.400	1.810
Ocean Quahogs [2]	5.333	2.840	5.333	2.840	5.333	2.840
Maine Ocean Quahogs [3]	100,000	35,240	100,000	35,240	100,000	35,240

[1] Numerical values are in millions except for Maine ocean quahogs.
[2] 1 bu = 1.88 cubic ft. = 53.24 liters.
[3] 1 bu = 1.2445 cubic ft. = 35.24 liters.

Comments and Responses

NMFS published proposed specifications on October 25, 2010, with a comment period that ended November 24, 2010. During the comment period on the proposed rule, NMFS received four comments. Three comments were received from commercial Atlantic surfclam and ocean quahog industry participants, and one comment was received from a private citizen.

Comment #1: One commenter proposed significant reductions to all quotas in order to end overfishing, but offered no scientific basis for this suggestion, and the comment does not speak to Atlantic surfclams or ocean quahogs specifically.

Response: Neither ocean quahogs nor Atlantic surfclam are overfished nor are subject to overfishing; therefore, there is no scientific basis for reducing the quotas as suggested by this commenter.

Comment #2: Three commenters suggested that the ocean quahog allocation should be reduced 25 percent to 4.0 million bushels.

Response: This request is based, in part, on concern over the health of the resource; two commenters raised a concern that the stock biomass may be less than half of the virgin biomass in the Virginia, Delmarva, and New Jersey regions, and that making determinations about the health of the stock based on the whole stock, rather than just the exploitable component of the stock, is a violation of the National Standards. However, as noted above, the most recent stock assessment (completed in 2009) concluded that ocean quahogs were not overfished and were not subject to overfishing. The stock assessment reviewed all available information on the ocean quahog stock. The decision to base the status determination and the quota on the entire stock rather than just the exploitable biomass is consistent with the best available scientific advice.

Comment #3: Two commenters also raised concerns with the economic implications of setting a quota higher than recent landings. The concern appears to be that, because surplus quota is allocated to the fishery, this could reduce the value of the fishing quota allocated to individuals, who are left with less demand for quota to lease.

Response: The Council has the discretion to act on this issue pursuant to the Magnuson-Stevens Act and has discussed this issue during the development of proposed specifications for the clam fishery. The Council's proposed quota of 5.33 million bushels is consistent with the best available scientific information on the stock, and the management approach selected by the Council remains consistent with the National Standards of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the MSA, and other applicable law.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause, under 5 U.S.C. 533(d)(3), to waive the 30-day delay in effectiveness period for the implementation of the 2011–2013 surfclam, ocean quahog, and Maine ocean quahog quotas. A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. ITQ shareholders each receive a portion of the overall annual quotas for the two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, 2011, regardless of the publication of the annual quota, as tags for the 2011 fishing year have already been issued by the vendor pursuant to § 648.75(b). ITQ allocations are often transferred either permanently or temporarily to meet changing economic circumstances in the fishery beginning immediately upon the commencement of these fisheries. Without a quota in effect, the industry does not have the ability to make a transfer of part or all of an allocation either permanently or temporarily. The inability of the industry to make such transfers effective would preclude the intended recipients of such transfers from fishing. Accordingly, a delay in the effectiveness of this rule would be contrary to the rule's intent to maintain current quota levels that have the full support of the fishing industry and facilitate the transfer of quotas requested by the industry.

This rule could not be published sooner because the Council did not provide its quota specification until September of 2010. As a result of that timing, in order for NMFS to provide a proposed rulemaking stage with adequate opportunity for comment, it is necessary to waive the 30-day delay in effectiveness, as it would compromise the start of the fishing year and thereby undermine the intent of the rule. The inability to transfer quota would be contrary to the public interest because it would preclude the intended recipients of such transfers from fishing, thereby resulting in a negative economic impact on the industry. Additionally, a delay in quota transfers would result in fewer days available to fish, and a vessel operator may feel obligated to fish during periods when they may otherwise choose not to do so. Given the increase in foul weather and hazardous seas during certain months, a vessel's ability to operate safely at sea could be compromised.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of these specifications. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA, RIR, and EA are available upon request (*see* **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A

description of why this action was considered, the objectives of, and the legal basis for, this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

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

Four public comments were submitted on the proposed rule. Although none of the comments were made in direct response to the IRFA, two commenters did raise concerns about the economic impacts associated with the quota levels implemented in this final rule. NMFS has responded to these comments in the Comments and Responses section of this preamble. No changes have been made in this final rule as a result of the comments provided on the proposed rule.

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

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross annual receipts not exceeding $4.0 million. In 2009, a total of 43 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under the IFQ system. In addition, 19 vessels participated in the limited access Maine ocean quahog fishery, for a total of 62 participants in the 2009 fisheries. Average 2009 gross income from surfclam IFQ trips was $833,333 per vessel, and from ocean quahog IFQ trips was $1,533,333 per vessel. The Maine ocean quahog fishery reported an average value of $105,263 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 62 commercial fishing entities fall below the SBA size threshold for small commercial fishing entities.

In addition to the active vessels that participate in the fishery there are 45 ocean quahog quota IFQ allocation holders, 57 surfclam allocation holders, and 40 Federal limited access Maine mahogany quahog permit holders. An allocation holder may choose to fish or lease his or her quota allocation.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The final quotas for 2011–2013 reflect the same quota levels set for 2008–2010. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the final quota level. Leaving the ocean quahog quota at the harvest level of 5.333 million bu (284 million L) is not expected to constrain the fishery. In fact, actual ocean quahog landings for 2008 and 2009 did not exceed 65 percent of the available quota. The total 2010 harvest is expected to be similar to that of recent years (as of October 31, 2010, only 53.6 percent of the quota had been harvested). In comparison, 56.5 percent of the quota had been harvested as of October 31, 2009.

The surfclam quota is to be set to the maximum allowed under the FMP. In contrast to the ocean quahog harvest, the surfclam fishery has harvested over 80 percent of the available quota each year since 2005. The Maine ocean quahog quota is to be also set at the maximum allowed under the FMP. The Maine ocean quahog quota is often fully harvested on an annual basis. It is anticipated that, by maintaining the status quo quota level for the next 3 years, the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 years.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. All ITQ allocation holders and fishermen in the Atlantic surfclam and ocean quahog fishery that would be impacted by this final rulemaking are considered to be small entities. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at *http://www.nero.noaa.gov.* The guide and this final rule will be available upon request from the Regional Administrator (*see* **ADDRESSES**).

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

Dated: December 21, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–32484 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
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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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA39

Members of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is undertaking a review of its regulations governing Federal Home Loan Bank (Bank) membership to identify provisions that may need to be updated to ensure that they remain consistent with the statutory provisions that require a nexus between Bank membership and the housing and community development mission of the Banks. This Advance Notice reviews the statutory provisions governing Bank membership and the regulatory provisions that implement those statutory requirements, suggests various ways that the regulations might be amended within this statutory framework, and invites comments on each of the possible alternatives.

DATES: Written comments must be received on or before March 28, 2011.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include "RIN 2590–AA39" in the subject line of the message.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA39" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, *Attention:* Comments/RIN 2590–AA39, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, *Attention:* Comments/RIN 2590–AA39, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, *eric.raudenbush@fhfa.gov,* (202) 414–6421 or Amy Bogdon, Associate Director, Division of Bank Regulation, *amy.bogdon@fhfa.gov,* (202) 408–2546 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the Advanced Notice of Proposed Rulemaking (ANPR). Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Overview of Membership Requirements

The 12 Banks are instrumentalities of the United States that were organized in 1932 under the Federal Home Loan Bank Act (Bank Act) to provide a reserve banking system for thrift institutions to support their residential mortgage lending activities.[1] The Banks are financial cooperatives of which eligible financial institutions may become members by purchasing capital stock. Membership allows institutions to obtain access to secured loans, known as advances, for the purpose of funding residential housing finance and, in some cases, for funding small businesses, small farms, small agri-businesses, and community development activities.[2] Bank membership has expanded since 1932 but is still limited to the types of financial institutions listed in section 4(a)(1) of the Bank Act, which are: Building and loan associations, savings and loan associations, cooperative banks, homestead associations, insurance companies, savings banks, community development financial institutions (CDFIs) and insured depository institutions.[3] Because all state-chartered depository institutions are now federally-insured, there are essentially three categories of institutions that are eligible for Bank membership: federally insured depository institutions, insurance companies, and CDFIs. In order for any of these institutions to become a member of a Bank, it must comply with the criteria specified in section 4(a)(1) and, in the case of certain insured depository institutions, those specified in section 4(a)(2) of the Bank Act.

Section 4(a)(1) imposes three general requirements that each eligible institution must satisfy in order to qualify for Bank membership. Under that provision an applicant for membership must: (A) Be duly organized under the laws of any state or the United States; (B) be subject to inspection and regulation under banking, or similar, laws of a state or the United States[4]; and (C) make long-term home mortgage loans.[5] An applicant that fails to satisfy any one of those requirements may not become a member

[1] *See* 12 U.S.C. 1423, 1432(a).

[2] *See* 12 U.S.C. 1430(a)(2).

[3] The Bank Act defines "insured depository institution" to include any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), as well as any credit union the member accounts of which are insured by the National Credit Union Administration (NCUA). 12 U.S.C. 1422(9).

[4] In the case of a CDFI applicant, the institution need only be certified as a CDFI by the United States Department of the Treasury, instead of being subject to inspection and regulation by a state or federal regulator.

[5] 12 U.S.C. 1424(a)(1).

of a Bank. Section 4(a)(2) imposes three additional requirements on applicants that are insured depository institutions that were not Bank members as of January 1, 1989. Such an institution may become a Bank member only if, in addition to meeting the general requirements of section 4(a)(1), the institution: (A) Has at least 10 percent of its total assets in residential mortgage loans; (B) is in a financial condition such that advances may be safely made to it; and (C) shows that the character of its management and its home-financing policy are consistent with sound and economical home financing.[6] The statute exempts from the 10 percent requirement any "community financial institution" (CFI), which is defined as any depository institution the deposits of which are insured by the FDIC and that has less than $1 billion in average total assets over the preceding three years.[7] By regulation, the Federal Housing Finance Board (Finance Board), and its successor FHFA, have applied the financial condition, character of management, and home financing policy requirements to all applicants for membership. Any applicant that does not meet any of these requirements also cannot become a Bank member.

FHFA has adopted regulations that implement each of the above-described statutory requirements. The regulations list six general eligibility requirements, which are the same as the above-cited statutory requirements, and further require any non-CFI depository institution to have at least 10 percent of its assets in residential mortgage loans. The regulations also require any non-depository institution applicants, *i.e.,* insurance companies and CDFIs, to have mortgage-related assets that reflect a commitment to housing finance.[8] For each of the six general eligibility requirements, as well as for the 10 percent requirement, the regulations include a separate provision that specifies how a Bank is to determine whether a particular applicant has satisfied the particular eligibility requirement. With respect to the requirements that an applicant "make long-term home mortgage loans" and that non-CFI depository institution applicants have 10 percent of their assets in "residential mortgage loans," the regulations provide that compliance is to be determined based on the applicant's most recent regulatory financial report that is available as of the date that the institution applies for membership. *See* 12 CFR 1263.9, 1263.10. Thus, under the existing regulatory regime, compliance with those two requirements is determined only at that point in time. An institution is not required to remain in compliance with either of those requirements subsequent to becoming a member.

B. Mission of the Banks

FHFA regulations define the mission of the Banks as providing to their members and housing associates financial products and services that assist such members' and housing associates' financing of housing and community lending.[9] Although this definition was adopted by the Finance Board, it remains consistent with both the Bank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which FHFA is established. The latter Act confirms that point by including among the duties of the Director of FHFA a responsibility to ensure that the operations and activities of the Banks foster liquid, efficient, competitive, and resilient national housing finance markets and that they carry out their statutory mission through activities that are authorized under the Bank Act.[10] Read together, these provisions clearly evidence a Congressional view that the Banks have a housing finance and community development mission and that it is the duty of the Director of FHFA to ensure that the Banks carry out that mission. In a similar fashion, the advances and membership provisions of the Bank Act make apparent that such a mission exists and indicate the scope of that mission, such as by stating that a Bank may make long-term advances to members only for the purposes of providing funds for residential housing finance and, in the case of advances to CFIs, providing funds for small businesses, small farms, small agri-businesses, and community development activities.[11] In addition, the Banks' mission is reflected in the statutory provisions that limit the types of collateral that they may accept for advances to members, which include, in addition to cash and government securities, first mortgage loans on residential property and securities representing a whole interest in such mortgage loans, as well as other real estate related collateral and, in the case of any CFI, secured loans for small business, agriculture, or community development activities or securities representing a whole interest in such secured loans.[12]

Finally, the Bank Act's membership provisions reinforce the connection between eligibility for membership and the Banks' housing finance and community development mission by requiring all eligible applicants to satisfy the "makes long-term home mortgage loans" requirement, by requiring all insured depository institution applicants to meet the "home financing policy" requirement, and by requiring all non-CFI depository institution applicants to meet the "10 percent" requirement in order to become a member.

C. FHFA Review of Membership Provisions

Recently, FHFA has begun a review of its membership regulations in order to identify provisions that may need to be updated to ensure that they remain consistent with previously described statutory requirements and the housing finance mission underlying those requirements. One purpose of this review is to determine whether the existing regulatory standards and the manner in which they have been applied allow the Banks to admit to membership institutions that have insufficient involvement in supporting residential housing finance and, if so, whether it would be appropriate to revise the regulations to ensure that any institutions admitted to membership have and maintain a demonstrable involvement in residential mortgage lending and otherwise comply with the statutory requirements for membership. The intent of this ANPR is to solicit public comments on these issues as an aid to FHFA in determining how to amend the current membership rules to strengthen the ties between membership and the Bank System's primary public purpose by helping to ensure that the focus of the Banks' advances business supports the Banks' housing finance and community development mission.

At this stage in the review process, FHFA has identified three regulatory provisions, all of which link membership to housing finance, that could be amended in certain respects to reinforce that connection. Those provisions are the "10 percent" requirement, the "makes long-term home mortgage loans" requirement, and the "home financing policy" requirement, each of which is discussed in detail below. FHFA is considering whether it would be appropriate to amend those requirements so that they would apply to members on a

[6] 12 U.S.C. 1424(a)(2).

[7] By statute, FHFA must annually adjust the $1 billion CFI asset limit for inflation. The inflation-adjusted CFI limit for 2010 is $1.011 billion.

[8] 12 CFR 1263.6.

[9] 12 CFR 1265.2.

[10] 12 U.S.C. 4513(a)(1).

[11] *See* 12 U.S.C. 1430(a)(2).

[12] 12 U.S.C. 1430(a)(3).

continuing basis, rather than only at the time of admission to membership, and whether it would be appropriate to establish more objective and quantifiable standards for the "makes long-term home mortgage loans" and "home financing policy" requirements. The following paragraphs discuss each of these regulatory provisions, their history, and how they might be revised to reinforce the connection between membership and support for residential housing finance. With respect to each of those issues, FHFA requests public comments on how well the existing regulations implement the underlying statutory requirements, whether there is a need to revise the regulations to reinforce the connection between membership and the housing finance mission, and the appropriateness of the alternatives being considered by FHFA. This notice also includes several other questions that are not derived from the three statutory requirements described above, but that have some implications for membership and the connection to housing finance, and FHFA requests comments on all aspects of those questions as well.

1. The 10 Percent Requirement

As mentioned above, section 4(a)(2)(A) of the Bank Act and § 1263.6(b) of the FHFA regulations provide that an insured depository institution that was not a Bank member as of January 1, 1989, may become a member only if it has at least 10 percent of its total assets in "residential mortgage loans." [13] The existing regulations employ a "presumptive compliance" approach, under which an applicant that is subject to the 10 percent requirement is deemed to be in compliance with that requirement if, based on the applicant's most recent regulatory financial report, *i.e.,* the report that the applicant files with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans.[14] Because the existing regulation requires a Bank to determine compliance with this requirement based solely on the applicant's most recent financial report, institutions that are subject to the 10 percent requirement need to demonstrate compliance only when applying for membership; there is no ongoing requirement to maintain residential mortgage loans at or above 10 percent of total assets. The absence of an ongoing requirement means that the current regulations would allow an institution that has been admitted to membership to reduce, or even eliminate, its residential mortgage loan assets subsequent to becoming a member. Although FHFA has no evidence that significant numbers of members that were subject to the 10 percent requirement when they became members have substantially reduced their holdings of residential mortgage loans after becoming members, it believes that as a matter of sound regulatory policy the membership regulations should not be structured in such a way as to permit or encourage that result. FHFA believes that amending the regulations to make compliance with the 10 percent requirement an ongoing requirement would eliminate the possibility of institutions substantially reducing their holdings of residential mortgage assets after becoming Bank members and would not pose an undue burden on a significant number of members.

Nothing in the Bank Act would preclude FHFA from applying the 10 percent requirement on an ongoing basis, although doing so would constitute a change in the policy established by the Finance Board. If FHFA were to apply the 10 percent requirement on an ongoing basis, it also would need to include new regulatory provisions that address how the Banks are to measure the ongoing compliance. Issues include whether compliance should be tested at specified points in time, such as annually or quarterly, and whether compliance should be based upon the actual amount of residential mortgage loans held as of those dates or the average amounts of residential mortgage loans held over a specified period, such as three years.

In addition to making the 10 percent requirement ongoing, FHFA has considered whether it would be appropriate to extend the requirement to other categories of applicants that are not currently subject to this requirement, or to retain the current approach, under which certain institutions are subject to an alternative requirement that they have mortgage-related assets that reflect a commitment to housing finance. At present, the 10 percent requirement applies only to insured depository institution applicants that are not CFIs: FDIC-insured banks and savings associations with average assets in excess of the $1,011,000,000 CFI asset cap, and all credit union applicants. The universe of additional institutions that could potentially be made subject to the 10 percent requirement would include all of those institutions not currently subject to the requirement: insurance companies, CDFIs, and CFIs. FHFA is not considering extending the 10 percent requirement to CFIs because that result appears to be precluded by the Bank Act, which states that CFIs may become members without regard to the percentage of their total assets that is represented by residential mortgage loans.[15] Arguably, section 4(a)(2) of the Bank Act implicitly precludes the extension of the 10 percent requirement to insurance companies and CDFIs because that requirement is listed among those that apply to insured depository institutions. Notwithstanding that fact, the Finance Board considered applying the 10 percent requirement to insurance companies (and believed it had the authority to do so) in 1993, when it adopted the original version of the membership regulations.[16] In that case, the Finance Board cited its general regulatory and rulemaking authorities as its basis for doing so. The Finance Board also noted that the other requirements of section 4(a)(2), the financial condition, character of management, and home financing policy requirements, had applied to all applicants since the enactment of the Bank Act.[17] Ultimately, the Finance Board declined to apply the 10 percent requirement to insurance company applicants and adopted the alternative requirement, now embodied in § 1263.6(c) of the regulations, that all applicants that are not insured depository institutions, such as insurance companies and CDFIs, have mortgage-related assets that reflect a commitment to housing finance. In adopting this alternative requirement, the Finance Board recognized that, although depository institutions and insurance companies are engaged in different lines of business, an insurance company applicant may have a significant absolute dollar volume of residential

[13] 12 U.S.C. 1424(a)(2)(A); 12 CFR 1263.6(b), 1263.10. The term "residential mortgage loans" includes: (1) Home mortgage loans; (2) funded residential construction loans; (3) loans secured by manufactured housing; (4) loans secured by junior liens on one-to-four family property or multifamily property; (5) certain mortgage pass-through securities; (6) certain mortgage debt securities; (7) home mortgage loans secured by a leasehold interest; and (8) loans that finance properties or activities that would satisfy the requirements for the Community Investment Program or a community investment cash advance program. 12 CFR 1263.1.

[14] 12 CFR 1263.10.

[15] 12 U.S.C. 1424(a)(4).

[16] *See* 58 FR 43522, 43532 (1993).

[17] In addition, the Finance Board justified the universal application of these other section 4(a)(2) requirements by reference to its duty to ensure the safety and soundness of the Bank System. *See* 58 FR 43522, 43532 (1993).

mortgage assets, given the large asset size of many insurance companies.[18]

In light of the above, FHFA requests comment on the following three questions relating to the 10 percent requirement:

Question One: Should FHFA revise § 1263.10 of its regulations so that an insured depository institution that is subject to the 10 percent residential mortgage loans requirement when it is admitted for membership must also comply with that requirement for the duration of the time that it remains a member?

Question Two: Should FHFA amend §§ 1263.6(b) and 1263.10 of its regulations to subject insurance company and CDFI applicants to the 10 percent residential mortgage loans requirement?

Question Three: If FHFA does not subject insurance company and CDFI applicants to the 10 percent requirement, should FHFA amend § 1263.6(c) of its regulations, which currently requires all such applicants to have mortgage related assets that reflect a commitment to housing finance, to establish levels of mortgage-related assets that may be deemed to constitute a sufficient commitment to housing finance?

2. The "Makes Long-Term Home Mortgage Loans" Requirement

Section 4(a)(1)(C) of the Bank Act applies to all applicants for Bank membership and provides that an institution may become a member only if it makes such home mortgage loans as the Director determines to be long-term loans. Section 1263.9 of the membership regulations implements that provision through a "presumptive compliance" approach, under which an applicant is deemed to have satisfied the statutory requirement if its most recent regulatory financial report demonstrates that it originates or purchases long-term home mortgage loans. Because the regulation requires a Bank to look solely to an applicant's most recent financial report, the Banks do not assess compliance with this provision at any subsequent date; there is no ongoing requirement that an institution that has been admitted to membership must continue to make long-term home mortgage loans after it has become a member. Thus, as is the case with respect to the 10 percent requirement, the absence of an ongoing requirement means that it is possible that an institution could reduce or cease making long-term home mortgage loans after becoming a member. As discussed previously, FHFA believes that as a matter of sound regulatory policy its membership regulations should not encourage such a result, and questions whether the existing provision is the most appropriate means of implementing the statutory "makes long-term home mortgage loans" requirement. Amending the membership regulations to make compliance with the "makes long-term home mortgage loans" requirement an ongoing requirement would eliminate that possibility, and should not pose an undue burden for Bank members.

FHFA believes that amending the regulations in that manner would be permissible under the Bank Act, although it would represent a departure from the point-in-time policy established by the Finance Board. Also, if this provision were to be made an ongoing requirement, FHFA also would need to develop a new test through which the Banks could measure their members' ongoing compliance with this requirement. Unlike the 10 percent requirement, the statutory language includes no quantifiable benchmarks for compliance with the "makes long-term home mortgage loans" requirement, and the only standard required by the regulations is that an applicant's financial reports must show that it originates or purchases such loans. In theory, an applicant could satisfy this requirement by having made a single long-term mortgage loan in the reporting period immediately preceding its application for Bank membership. Although the current regulations do not require members to comply with this provision on an ongoing basis, a previous regulator of the Bank System interpreted this provision of the Bank Act as requiring that applicants be engaged in the business of making long-term home mortgage loans as an ongoing activity, and not just as an isolated instance. *See* Opinion of the General Counsel of the Federal Home Loan Bank Board, at 2 (Nov. 7, 1978).

If FHFA were to amend the regulations to establish quantifiable benchmarks for this requirement, it necessarily would have to determine the content of those benchmarks. For example, FHFA could develop benchmarks based on a specified percentage of an institution's assets or on a minimum dollar volume of the institution's long-term home mortgage loan originations or loan purchases. If FHFA were to establish a benchmark based on a percentage of assets that an institution must have in long-term home mortgage loans, the percentage would likely need to be smaller than the percentage of assets that members must have under the 10 percent requirement, discussed above, because of the differences between the terms "residential mortgage loans" and "long-term home mortgage loans." The operative term for determining compliance with the 10 percent requirement is "residential mortgage loans," which is considerably more expansive than the term "long-term home mortgage loans." "Residential mortgage loans" is defined to include eight different categories of loans, one of which is "home mortgage loans."[19] "Home mortgage loans" is considerably more narrow and is defined by statute and by regulation to mean a loan (or an interest in a loan) that is secured by a first lien on one-to-four family property or multifamily property.[20]

If FHFA were to establish a standard with quantifiable benchmarks, it would also need to decide whether those benchmarks should apply equally to all applicants or members, or whether it should establish separate requirements for the different classes of institutions eligible for membership—insured depository institutions, insurance companies, and CDFIs—in recognition of the fact that each type of institution has a different primary business model and, thus, a different level of involvement in supporting residential mortgage finance. A single standard for all institutions would be easier for the Banks to apply. On the other hand, establishing separate standards that are tailored to the different classes of institutions that are eligible for membership would recognize the practical reality that each type of eligible institution, by the nature of its business, has a different level of involvement in mortgage lending.

If FHFA were to establish separate standards for the three categories of institutions that are eligible for membership, it likely would have to consider and resolve certain ancillary issues related to the different types of institutions. For example, if FHFA were

[18] 58 FR 43522, 43532–33 (1993). At the time this requirement was first promulgated, the Finance Board itself reviewed and approved Bank membership applications. In 1996, this provision was revised to devolve the decision-making authority to the Banks. *See* 61 FR 42531, 42545 (1996).

[19] *See* 12 CFR 1263.1.

[20] 12 U.S.C. 1422(4), (5); 12 CFR 1263.1. The term "home mortgage loan" includes primarily the following: (1) First mortgage loans secured by one-to-four family property, multifamily property, or combination business or farm property where at least 50 percent of the total appraised value is attributable to the residential portion of the property; and (2) mortgage pass-through securities that represent an undivided ownership interest in the above types of loans or in securities that represent an undivided ownership interest in such loans. The regulations also define "long-term" to mean a term to maturity of five years or greater.

to develop a percentage-based standard for insurance companies, it would need to consider whether the percentage should be calculated based on the insurance company's "total assets" or on its "invested assets," the latter of which would typically exclude certain assets, such as premiums receivable and separate accounts. For the reasons mentioned above with regard to the 10 percent requirement, FHFA might determine that it would be preferable to apply a volume-based standard to insurance companies, or perhaps a combination of the volume-based and percentage-based approaches. In a similar fashion, if FHFA were to establish a separate, quantifiable standard for insurance companies, it might also consider whether it would be appropriate to establish different standards for different types of insurance companies, recognizing that insurers engaged in underwriting different lines of insurance are apt to hold different types of investments and may include mortgage assets to differing degrees. For example, life insurance companies historically have held longer-term assets, including mortgage loans, because their liabilities on their policies tend to be of longer duration, while property and casualty insurers traditionally have had investment portfolios with more short-term assets and fewer bonds and mortgage loans, because their policy liabilities tend to be of shorter duration.

In light of the above discussion, FHFA requests comment on the following five questions relating to the "makes long-term home mortgage loans" requirement:

Question Four: Should FHFA revise § 1263.9 of its regulations to require that an institution that is admitted to membership must comply with the "makes long-term home mortgage loans" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?

Question Five: Should FHFA replace the existing standard, which requires only that an institution demonstrate that it originates or purchases home mortgage loans, with one or more quantifiable standards, such as by requiring applicants and members to have a specified portion of their assets invested in long-term home mortgage loans or by meeting a minimum dollar volume of originations and purchases of such loans?

Question Six: If FHFA were to adopt a standard based on a minimum percentage of long-term home mortgage loans, what would be an appropriate level of long-term home mortgage loans or mortgage-backed securities to be held by depository institutions, insurance companies, or CDFIs, respectively?

Question Seven: If FHFA were to replace the existing regulatory requirement with a quantifiable standard, should FHFA apply one standard to all eligible institutions and members, or separate standards for the three distinct categories of institutions that are eligible for membership?

Question Eight: If FHFA were to establish separate quantifiable standards for the separate categories of eligible institutions, should it also establish separate sub-categories for different types of institutions within each category, such as for life insurance companies and property and casualty insurance companies?

3. The Home Financing Policy Requirement

Section 4(a)(2)(C) of the Bank Act provides that an insured depository institution that was not a Bank member as of January 1, 1989, may become a member only if the character of its management and its home financing policy are consistent with sound and economical home financing.[21] Although the Bank Act does not require other applicants to comply with the home financing policy requirement, the FHFA regulations have retained the provisions adopted by the Finance Board that require all applicants for membership to demonstrate their compliance with this provision.[22] Neither the Bank Act nor the membership regulations defines the term "home financing policy" or requires that a home financing policy be in the form of a written document. Section 1263.13 of the membership regulations implements the home financing policy requirement through a "presumptive compliance" approach, under which an applicant that is subject to the Community Reinvestment Act (CRA) is deemed to be in compliance with the requirement if it has received a CRA rating of "Satisfactory" or better on its most recent CRA performance evaluation. An applicant that is not subject to the CRA is required to file, as part of its application for membership, a written justification acceptable to the Bank of how and why its home financing policy is consistent with the Bank System's housing finance mission. An applicant that does not have a satisfactory CRA rating is presumed not to have complied with the home financing policy requirement, although it may attempt to rebut that presumption.[23] As is the case with respect to the 10 percent requirement and the "makes long-term home mortgage loans" requirement, the Banks assess compliance with the home financing policy requirement only at the time that they consider an institution's application for membership.[24]

As discussed previously, FHFA believes that the assessment of compliance with certain of the eligibility requirements on a one-time basis may not be the most appropriate means of implementing those provisions. Moreover, in the context of the home financing policy requirement, the absence of any qualitative standards as to the form or content of what constitutes an acceptable home financing policy compounds the problem of determining whether applicants comply with this provision. Accordingly, FHFA is considering whether it would be appropriate to amend its regulations relating to the home financing policy requirement by establishing more specific standards and by making compliance an ongoing requirement for all members. Amending the regulations in that manner would be permissible under the Bank Act, although doing so would represent a departure from the point-in-time policy established by the Finance Board and would require FHFA to develop new tests through which the Banks could assess their members' ongoing compliance with this requirement.

If FHFA were to develop a new standard for assessing compliance with the home financing policy requirement, an initial question would be the form of the new standard, *i.e.,* whether it should be written, or whether some members could demonstrate compliance by other means. Requiring all applicants to have a written home financing policy that explains in narrative fashion the manner and degree to which the institution's existing activities and investments support home financing might make it easier to assess compliance with the home financing policy requirement, although a revised rule likely would need to establish some minimum

[21] 12 U.S.C. 1424(a)(2)(C).

[22] 12 CFR 1263.6(a)(6), 1263.13.

[23] An applicant can rebut the presumption of noncompliance by providing either a confirmation from its appropriate regulator of its recent satisfactory CRA rating, or a written analysis acceptable to the Bank demonstrating that its CRA rating is unrelated to home financing, and providing substantial evidence of how and why its home financing credit policy and lending practices meet the credit needs of its community. 12 CFR 1263.17(f)(2).

[24] The use of an applicant's CRA rating at a single point in time for purposes of the membership regulations differs from the use of a member's CRA rating in assessing its compliance with the community support regulation under 12 CFR 1290.3, which is an ongoing requirement.

benchmarks in order to ensure that the provision is applied uniformly throughout the Bank System. Because certain applicants will have a business model that focuses primarily on mortgage lending, it also would be possible to fashion an alternative home financing policy standard for those institutions that would deem them to have an acceptable home financing policy if they have a specified level of mortgage loan originations or mortgage related assets or otherwise demonstrate that mortgage lending is their principal line of business.

Apart from the form of a new home financing policy standard, FHFA also would need to develop the content of the standard. At present, the regulations do not address the content of an acceptable home financing policy, but instead use an applicant's CRA rating as a proxy for an acceptable policy. As mentioned above, one possible approach, which could be in lieu of or in addition to the CRA rating, would be to require an applicant or member to maintain a specified level of mortgage related assets or mortgage loan originations in order to be deemed to have an acceptable home financing policy. If FHFA were to adopt that approach, it would have to be consistent with the 10 percent requirement and the "makes long-term home mortgage loans" requirement, and it is possible that compliance with the home financing policy requirement could be presumed by compliance with ongoing quantifiable standards for the other two requirements. If FHFA were to develop quantifiable standards for the home financing policy requirement, it also might consider whether the specifics of a "home financing policy" could vary based on the type of institution involved. Such an approach could be warranted based on the different levels of involvement in mortgage lending that might be typical among the different types of institutions that are eligible for Bank membership. For example, the home financing activities of a traditional savings and loan association (the core business of which is mortgage lending) are apt to be significantly greater than those of an insurance company or CDFI (the primary business of which is underwriting insurance and promoting community development, respectively). Given that the statutory requirement for a home financing policy is that it must be "consistent with sound and economical home financing," a regulatory standard that recognizes the possibility of distinctions among the different types of institutions that are eligible for membership would appear to be consistent with the Bank Act.

In light of the above discussion, FHFA requests comment on the following four questions relating to the "home financing policy" requirement:

Question Nine: Should FHFA revise § 1263.13 of its regulations to require that an institution that is admitted to membership must comply with the "home financing policy" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?

Question Ten: Should FHFA define the term "home financing policy" and, if so, how should that term be defined? Should it be defined to include only a written policy that describes in narrative fashion the manner and extent to which an applicant's past and current activities and investments support home financing, or should it also be defined to include certain business practices, such as having specified levels of mortgage related assets above which an acceptable housing finance policy could be presumed?

Question Eleven: Should the regulations allow the specifics of a home financing policy to vary based on the type of institution? Should FHFA recognize that originating mortgage loans and investing in mortgage loans and mortgage related securities may constitute the core business of certain types of eligible institutions, such as thrift institutions, while those same activities may constitute only an incidental portion of the business of other eligible institutions, such as insurance companies?

Question Twelve: Should FHFA continue to use an institution's CRA rating as a proxy for compliance with the home financing policy requirement or should FHFA develop an alternative approach to assessing compliance with this requirement? One such alternative could be to develop a quantifiable standard, such as one based on a minimum level of housing related assets, which could be used either alone or in conjunction with the CRA rating, for determining whether an institution has an acceptable home financing policy.

4. Other Provisions

In addition to the foregoing, FHFA is also considering whether certain other provisions of its membership regulations should be revised to address concerns relating to other aspects of the membership regulations. Those issues relate to "shell" or "captive" insurance companies, consequences for failing to comply with the new requirements, and the structure of the current membership regulation, and are discussed below.

5. Captive or Shell Insurance Companies

When the Bank Act was enacted in 1932, it included insurance companies among the types of institutions that were permitted to become Bank members because at that time life insurance companies were active residential mortgage lenders.[25] Although insurance companies have been eligible for Bank membership since the inception of the Bank System, until recently comparatively few insurance companies have become members, and, as of December 31, 2009, insurance companies represented only 209 of the 8,057 members of the Bank System. Those companies that have become members would have satisfied the statutory and regulatory requirements relating to home financing, as discussed above, as well as the requirements that they be "subject to inspection and regulation" under federal or state law and that their financial condition be such that advances could be safely made to the insurance company member. There have been some instances in which Banks have admitted to membership, or inquired about admitting to membership, institutions that are chartered as an insurance company but are inactive—"shell" insurance companies—or do not underwrite insurance for third parties—"captive" insurance companies. Such institutions raise at least two concerns relating to their eligibility to become Bank members, which are whether they are in fact subject to the degree of supervision and examination contemplated by section 4(a)(1)(B) of the Bank Act, and whether they have a *bona fide* involvement in supporting housing finance. A "shell" insurance company is apt to be inactive, *i.e.,* not engaged in underwriting any types of insurance. A company that is not underwriting insurance also may not be actively supervised or examined by its state insurance commissioner, and thus may not file periodic financial reports with the state regulator. Moreover, an inactive insurance company without any insurance liabilities on its books is unlikely to maintain an investment portfolio, and in particular, investments in mortgage loans or mortgage-backed securities that provide the housing finance nexus contemplated by Congress. The absence of ongoing supervision and examination by the

[25] *See The Anatomy of a Residential Mortgage Crisis: A Look Back to the 1930s,* Kenneth A. Snowden (June 2009) (insurance company share of the residential mortgage market).

state regulator and the absence of periodic financial reports calls into question the ability of a shell insurance company to satisfy the statutory requirement that it is "subject to inspection and regulation" by a state or federal regulator, and raises additional questions about whether a Bank could accurately assess the financial condition of such a company in order to determine whether the Bank could safely make advances to the insurance company. In a similar fashion, the absence of any underwriting of insurance, in the case of a shell company, and the limited nature of the self-insurance activities, in the case of a captive insurance company, call into question whether such institutions have any *bona fide* involvement in the lending or investment activities that support residential mortgage markets and that are typical of other insurance companies that underwrite insurance for third parties and maintain an investment portfolio, which may include mortgage related investments that correspond to the types of risks that the companies underwrite. Membership for shell insurance companies or captive insurance companies also raises other supervisory concerns, such as whether the insurance company member is simply acting as a conduit to provide advances to its parent company that which is ineligible for membership and thus cannot legally obtain advances in its own right. To address those concerns, FHFA is considering whether it should amend its regulations to preclude the possibility that shell or captive insurance companies, which may not be adequately supervised or may not be actively engaged in any meaningful housing finance activities, could be admitted to membership. Accordingly, FHFA requests comments on the following question:

Question Thirteen: Should FHFA amend its membership regulations to require that insurance company applicants be actively engaged in underwriting insurance for third parties and be actively examined and supervised by their appropriate state insurance regulator, and that insurance company members remain so engaged and so examined and supervised as a condition to remaining Bank members?

6. Sanctions for Noncompliance. If FHFA were to amend its regulations to make the "10 percent," "makes long-term home mortgage loans," or "home financing policy" requirements ongoing, it believes that it should also incorporate a transition period to allow members that are not in compliance with the new requirements a period of time within which to come into compliance if they wish to remain members. With respect to the 10 percent requirement, initial research indicates that, of the approximately 1,500 members that were subject to that requirement when they became members, only 32 institutions would fail to comply with that requirement if it were applied to them as of December 31, 2009. Of those 32 institutions, 11 had residential mortgage loans of more than nine percent of their total assets and 12 had residential mortgage loans of between seven and nine percent of their total assets, which suggests that they should be able to comply with an ongoing "10 percent requirement" following a reasonable transition period. Only nine current members had residential mortgage loans of less than five percent of their total assets, with four of those members having ratios of less than one percent. This suggests that even with a transition period some of those institutions may not be able to comply with an ongoing 10 percent requirement. In a similar fashion, if the eligibility requirements are to become ongoing, it is also possible that some members that would initially comply with the new requirements may later fall out of compliance with those requirements. Both of those possibilities raise the question of how FHFA and the Banks should deal with institutions that either cannot comply with the new requirements or that subsequently fall out of compliance.

Each of the regulatory provisions that FHFA is contemplating making an ongoing requirement is an eligibility requirement for membership, which suggests that failure to comply with any of them should make the institution ineligible for membership and thus could require the Bank to terminate its membership. Section 6(d)(2)(A)(i) of the Bank Act provides that the board of directors of a Bank may terminate the membership of any institution if the institution fails to comply with any provision of the Bank Act or FHFA regulations. 12 U.S.C. 1426(d)(2)(A)(i). The use of the language "may terminate" in that provision, however, indicates that the provision is not mandatory and would allow FHFA and the Bank to impose sanctions other than termination of membership, at least initially. For example, FHFA could allow the Banks to give a noncompliant member a specified period of time within which to cure the noncompliance before terminating its membership. During that time the Bank could be prohibited from entering into new transactions with the member, but would not be required to take any other adverse actions against the member.

Accordingly, in order to help it determine how best to deal with the possibility of noncompliance with any new requirements, FHFA requests comment on the following questions relating to sanctions for failure to comply with any revised membership requirements:

Question Fourteen: Should FHFA amend the membership regulations to address the possibility that a member might not comply with, or might later fall out of compliance with, one or more of the new ongoing membership requirements after a transition period has expired, and if so, should FHFA require the Banks to terminate that institution's membership, either with or without a grace period, or should FHFA consider lesser sanctions, such as prohibiting further access to Bank services during a specified grace period, before requiring the Banks to terminate the membership of the noncompliant members?

7. Regulatory Structure. The current membership regulations embody a "presumptive compliance" approach, under which an eligible institution that satisfies the regulatory standards is presumed to comply with the corresponding statutory requirements, and an institution that fails to satisfy any of the regulatory standards may nonetheless attempt to rebut the presumption of noncompliance by submitting certain specified additional information to the Bank.[26] The regulatory standards relating to the "makes long-term home mortgage loans" and the "10 percent" requirements are not rebuttable, although the standards relating to the "home financing policy," "inspection and regulation," "character of management," and "financial condition" requirements are rebuttable. As part of its review of the membership regulations FHFA has also considered whether it should retain the "presumptive compliance" and "rebuttal" approaches of the current regulations, along with the existing regulatory standards, many of which are phrased in somewhat general terms, or whether it should adopt more objective and quantifiable regulatory standards that would be more of a "bright line" approach for evaluating eligibility for membership. In order to help it determine the appropriate approach for the regulatory standards, FHFA requests comment on the following question:

Question Fifteen: Should FHFA retain the existing structure of its membership regulations, under which the regulations

[26] *See* 12 CFR 1263.17 (rebuttal provisions).

establish certain standards of "presumptive compliance" and allow an opportunity for institutions that do not meet those standards to rebut the presumption of noncompliance, or should FHFA devise an alternative structure, such as one that incorporates "bright line" tests for each of the various eligibility requirements and does not create presumptions that an institution would be permitted to rebut? [27]

Question Sixteen: Should FHFA play a role in resolving close membership issues, or leave them to the discretion of the Banks?

III. Request for Comments

FHFA invites comments on all of the issue discussed above, and will consider all comments in developing a proposed rule to amend its membership regulations.

Dated: December 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–32467 Filed 12–23–10; 8:45 am]

BILLING CODE 8070–01–P

[27] In January 2010, FHFA revised its membership regulations to implement statutory amendments authorizing CDFIs to become Bank members. As part of those revisions, FHFA allowed CDFI applicants that could not demonstrate compliance with certain of the specific standards relating to financial condition to provide alternative information demonstrating that they are in sound financial condition. By raising the larger issue of the appropriate regulatory structure for the membership regulations FHFA does not intend to change its policy, as evidenced by the recent revisions, that CDFI applicants are to be given latitude in demonstrating the soundness of their financial condition.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 740, 743, 758, and 774

[Docket No. 100923470–0626–02]

RIN 0694–AF03

Export Control Modernization: Strategic Trade Authorization License Exception

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a typographical error in the address for submitting e-mail comments that appeared in a proposed rule, "Export Control Modernization: Strategic Trade Authorization License Exception," published on December 9, 2010.

DATES: Comments must be received by BIS no later than February 7, 2011.

ADDRESSES: Comments on this correction may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2010–0038. Comments may also be submitted via e-mail to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AF03 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: William H. Arvin, Regulatory Policy Division, e-mail *warvin@bis.doc.gov,* telephone 202–482–2440.

SUPPLEMENTARY INFORMATION: The address for submitting e-mail comments was incorrectly stated under the **ADDRESSES** caption of a proposed rule entitled "Export Control Modernization: Strategic Trade Authorization License Exception" (75 FR 76653, December 9, 2010). This correction notice states the correct e-mail address in the **ADDESSSES** caption, which is *publiccomments@bis.doc.gov.*

In proposed rule FR Doc. 2010–30968, beginning on page 76653 in the issue of December 9, 2010, make the following correction: On page 76654, in the **ADDRESSES** section, correct "*publiccomments.bis.doc.gov*" to read "*publiccomments@bis.doc.gov*".

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–32441 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–5–000]

Interpretation of Protection System Reliability Standard

December 16, 2010.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The North American Electric Reliability Corporation (NERC) has submitted a petition (Petition) requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). The Commission proposes to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard PRC–005–1, and proposes to direct NERC to develop modifications to the PRC–005–1 Reliability Standard, as discussed below, through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard, highlighted by the proposed interpretation.

DATES: Comments are due February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov.doc-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ron LeComte (Legal Information), Office of the General Counsel, 888 First Street, NE., Washington, DC 20426. 202–502–8405. *Ron.lecomte@ferc.gov.*

Danny Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, 888 First Street, NE., Washington, DC 20426. 202–502–8892. *Danny.johnson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

NERC submitted the Petition requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). NERC developed the interpretation in response to a request for interpretation submitted to NERC by the Regional Entities Compliance Monitoring Processes Working Group (Working Group).[1] The Commission proposes to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard

[1] The Working Group is a subcommittee of the Regional Entity Management Group which consists of the executive management of the eight Regional Entities.

PRC–005–1, and proposes to direct NERC to develop modifications to the PRC–005–1 Reliability Standard, as discussed below, through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard highlighted by the proposed interpretation, as discussed below. The Commission seeks comments on its proposal.

I. Background

2. Section 215 of the Federal Power Act (FPA) requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.[2] Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6] On April 4, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a Final Rule, Order No. 693,[7] approving 83 of the 107 Reliability Standards, including Reliability Standard PRC–005–1. In addition, pursuant to section 215(d)(5) of the FPA,[8] the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards, including PRC–005–0.[9]

4. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[10] In response, the ERO will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules of Procedure provide that, within 45 days, the team will draft an interpretation of the reliability standard and submit it to the ballot pool. If approved by the ballot pool and subsequently by the NERC Board of Trustees (Board), the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authorities for approval.

II. Reliability Standard PRC–005–1

5. The purpose of PRC–005–1 is to "ensure all transmission and generation Protection Systems affecting the reliability of the Bulk Electric System (BES) are maintained and tested." In particular, Requirement R1, requires that:

R1. Each Transmission Owner and any Distribution Provider that owns a transmission Protection System and each Generator Owner that owns a generation Protection System shall have a Protection System maintenance and testing program for Protection Systems that affect the reliability of the BES. The program shall include:

R1.1. Maintenance and testing intervals and their basis.

R1.2. Summary of maintenance and testing procedures.

6. NERC defines "Protection System" as follows: "Protective relays, associated communication systems, voltage and current sensing devices, station batteries and DC control circuitry." [11]

III. NERC Proposed Interpretation

7. In the NERC Petition, NERC explains that it received a request from the Working Group for an interpretation of Reliability Standard PRC–005–1, Requirement R1, addressing five specific questions. Specifically, the Working Group questions and NERC proposed interpretations include:

Request 1: "Does R1 require a maintenance and testing program for the battery chargers for the 'station batteries' that are considered part of the Protection System?"

Response: "While battery chargers are vital for ensuring 'station batteries' are available to support Protection System functions, they are not identified within the definition of 'Protection Systems.' Therefore, PRC–005–1 does not currently require maintenance and testing of battery chargers."

Request 2: "Does R1 require a maintenance and testing program for auxiliary relays and sensing devices? If so, what types of auxiliary relays and sensing devices? (*i.e.,* transformer sudden pressure relays)."

Response: "The existing definition of 'Protection System' does not include auxiliary relays; therefore, maintenance and testing of such devices is not explicitly required. Maintenance and testing of such devices is addressed to the degree that an entity's maintenance and testing program for DC control circuits involves maintenance and testing of imbedded auxiliary relays. Maintenance and testing of devices that respond to quantities other than electrical quantities (for example, sudden pressure relays) are not included within Requirement R1."

Request 3: "Does R1 require maintenance and testing of transmission line re-closing relays?"

Response: "No. 'Protective Relays' refer to devices that detect and take action for abnormal conditions. Automatic restoration of transmission lines is not a 'protective' function."

Request 4: "Does R1 require a maintenance and testing program for the DC circuitry that is just the circuitry with relays and devices that control actions on breakers, *etc.,* or does R1 require a program for the entire circuit from the battery charger to the relays to circuit breakers and all associated wiring?"

Response: "PRC–005–1 requires that entities (1) address DC control circuitry within their program, (2) have a basis for the way they address this item, and (3) execute the program. Specific additional requirements relative to the scope and/or methods are not established."

Request 5: "For R1, what are examples of 'associated communications systems' that are part of 'Protection Systems' that require a maintenance and testing program?"

Response: "Associated communication systems" refer to communication systems used to convey essential Protection System tripping logic, sometimes referred to as pilot relaying or teleprotection. Examples include the following:

—Communications equipment involved in power-line-carrier relaying;
—Communications equipment involved in various types of permissive protection system applications;
—Direct transfer-trip systems;
—Digital communication systems.

* * *"

[2] 16 U.S.C. 824.

[3] *Id.* 824o(d)(2).

[4] *Id.* 824o(e)(3).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp., 116 FERC ¶ 61,062, order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

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

[8] 16 U.S.C. 824o(d)(5).

[9] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1475.

[10] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 26–27 (2007).

[11] *See* NERC Glossary of Terms Used in Reliability Standards at *http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

8. In support of its request for approval, NERC states that it believes that this interpretation both fairly represents the language of the Reliability Standard and clarifies what components should be included in the maintenance and testing programs specified in the requirement. NERC states that this interpretation supports the reliability of the Bulk-Power System by providing greater clarity regarding the components that make up a Protection System as defined in the NERC Glossary of Terms.

9. NERC states that an interpretation of a Reliability Standard requirement cannot expand the intent or meaning of the requirement.[12] As such, NERC states that any modifications to the language in the requirements must be processed through the NERC *Reliability Standards Development Procedure, Version 6.1.* With this in mind, NERC further states that it must clarify the requirement language in PRC–005–1a to provide a complete framework for maintenance and testing of equipment necessary to ensure the reliability of the Bulk Power System. NERC states that this activity is already underway in the scope of Project 2007–17—Protection System Maintenance and Testing.[13]

IV. Discussion

10. The Commission proposes to accept NERC's proposed interpretation of Reliability Standard PRC–005–1 Requirement R1. As discussed above, NERC's Glossary defines "Protection System" as: "Protective relays, associated communication systems, voltage and current sensing devices, station batteries and DC control circuitry." NERC's proposed interpretation essentially identifies what equipment is considered to be a "protective relay," "associated communication system," "sensing device," or "station battery." None of these terms or phrases within the NERC definition of "Protection System" are further defined any where else. NERC's interpretation provides further meaning to these phrases, is not inconsistent with the language of the Reliability Standard and, therefore, appears reasonable. Further, the interpretation should assist in providing a consistent understanding of what constitutes a "Protection System" for those entities that must comply with Reliability Standard PRC–005–1. Accordingly, we proposed to approve NERC's interpretation.

11. However, we are concerned that the proposed interpretation highlights a gap in the required Protection System maintenance and testing pursuant to Requirement R1 of PRC–005–1.[14] In support of our concern, we note that the NERC Glossary includes protective relays within the definition of Protection System. As discussed below, we believe that all components that serve in some protective capacity to ensure reliable operation of the Bulk-Power System should be included within the definition of "Protection System" and should be maintained and tested accordingly—not just the limited subset identified in the NERC interpretation. We note that NERC's practice prior to mandatory and enforceable Reliability Standards included such elements, and we believe that that understanding should be restored in either the definition or the Reliability Standard. In particular, prior to the Version 0 standards, NERC's Compliance Template for NERC Planning Standard III.A.M4—System Protection and Control, Transmission Protection System, S4 (Protection system maintenance and testing programs shall be developed and implemented) stated that "[t]ransmission system protection identification [components] shall include, *but are not limited to;* relays, instrument transformers, communication systems where appropriate, and batteries" (emphasis added).[15] The "but are not limited to" language was not translated into the Version 0 Reliability Standards that were filed for Commission approval. In addition to NERC's Glossary definition, the Institute of Electronics and Electrical Engineers (IEEE) defines "protective relay" as a relay whose "function is to detect defective lines or apparatus or other power system conditions of an abnormal or dangerous nature and to initiate appropriate control circuit action." Therefore, to prevent a gap in reliability, any component that detects any quantity needed to take an action, or that initiates any control action (initial tripping, reclosing, lockout, *etc.*) affecting the reliability of the Bulk-Power System should be included as a component of a Protection System. Accordingly, to address our concern, pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop a modification to the Reliability Standard to include any component or device that is designed to detect defective lines or apparatuses or other power system conditions of an abnormal or dangerous nature and to initiate appropriate control circuit actions.

A. Request 2

12. In response to Request 2, NERC stated that the existing definition of "Protection System" "does not include auxiliary relays," and that auxiliary relays need only be maintained if an entity's maintenance and testing program "for DC control circuits involves maintenance and testing of imbedded auxiliary relays." Further, the interpretation excludes the maintenance of all devices that "respond to quantities other then electrical quantities" and, specifically, sudden pressure relays. We are concerned that these exclusions contradict the purpose statement of PRC–005–1, which provides that "all transmission and generation Protection Systems affecting the reliability of the BES are maintained and tested," and, as discussed below, will result in a gap in the maintenance and testing of Protection Systems affecting the reliability of the Bulk-Power System.

13. If auxiliary relays are included within the Protection System, in conjunction with other protective relays (*e.g.,* as a contact multiplier or interface between dissimilar protective systems), or as part of the Protection System scheme (*e.g.,* as the relay that initiates a protective action for Bulk-Power System elements), they must be maintained and tested to prevent a gap in the reliability affecting the Bulk-Power System. This requirement is consistent with NERC's recommendation of Protection System components specified for performance

[12] NERC Request for Approval of Interpretation at 8.

[13] NERC Project 2007–17, Protection System Maintenance and Testing proposes to revise the definition of Protection System as "protective relays which respond to electrical quantities, communication systems necessary for correct operation of protective functions, voltage and current sensing devices providing inputs to protective relays, station dc supply associated with protective functions (including station batteries, battery chargers, and non-battery-based dc supply), and control circuitry associated with protective functions through the trip coils(s) of the circuit breakers or other interrupting devices."

[14] Because the term "Protection System" is present in other approved Reliability Standards, the interpretation affects other Reliability Standards not addressed within the scope of the proposed interpretation.

[15] The Requirement R1.1 provisions in the development of the Version 0 definition of Protection System maintenance and testing program requirements included:

R1.1. Transmission protection system identification shall include *but are not limited to* (emphasis added):

R1.1.1. Relays.

R1.1.2. Instrument transformers.

R1.1.3. Communications systems, where appropriate.

R1.1.4. Batteries.

R1.2. Documentation of maintenance and testing intervals and their basis.

R1.3. Summary of testing procedure.

R1.4. Schedule for system testing.

R1.5. Schedule for system maintenance.

R1.6. Date last tested/maintained.

tests based on NERC's historical standards, and experience from system events.[16] Components include protective relays, AC current and voltage sources, communication channel, DC control circuitry, auxiliary relay, breaker trip coil, and DC source as components of a Protection System. This requirement is also consistent with the Commission's understanding of the term "protective relay" used in the NERC Glossary definition of Protection System as including all of the individual devices that are either programmed or set to respond to specific conditions, provide input as to the status of facilities, provide or receive signals from communication channels, and initiate actions as required to assure faults, other abnormal conditions, and any other automatic action associated with a fault or abnormal action intended to assure reliability. Auxiliary relays that are used either within the DC control circuitry of a Protection System or in conjunction with other Protective System components,[17] such as those used as part of the communication channels to provide or receive signals to interface with the DC control circuitry, and are necessary for the correct operation of the Protection System, and the failure to maintain the auxiliary relay will result in a gap in the maintenance and testing of Protection System affecting the reliability of the Bulk-Power System.

14. As noted previously, we also are concerned that the proposed interpretation excludes non-electrical sensing relays. "Protective relays" are listed as a component in the NERC definition of "Protection System." Under a plain reading, the term "protective" describes a relay that serves to protect the Reliable Operation of the Bulk-Power System, and thus includes all relays with no stipulation or requirements on device inputs. Some protective relays that do not respond to electric quantities (*e.g.,* sudden pressure relays) nevertheless should be considered as part of the Protection System because they can be crucial for ensuring reliable operation. If a component is designed to sense or take action against an abnormal system condition that will affect the reliable operation of the Bulk-Power System, excluding that component results in a gap in the maintenance and testing of relays affecting the reliability of the Bulk-Power System. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose that NERC propose a modification to the Reliability Standard to address our concern. Specifically, we propose to direct NERC to include any device, including auxiliary and backup protection devices, that is designed to sense or take action against any abnormal system condition that will affect reliable operation.

B. Request 3

15. In request 3, the Working Group asks whether Requirement R1 requires maintenance and testing of transmission line re-closing relays. Reclosing relays are typically used on the Bulk-Power System to address concerns with system stability, system security, or continuity of service, and must be maintained to ensure correct operation.[18] In addition, because the operation of such high-speed reclosing relays is usually automatic and within one second of the tripping of the Bulk-Power System element,[19] the operation of these relays must also be coordinated with the initial tripping of the Bulk-Power System element. A misoperating or miscoordinated reclosing relay may result in the reclosure of a Bulk-Power System element back onto a fault or that a misoperating or miscoordinated reclosing relay may fail to operate after a fault has been cleared, thus failing to restore the element to service. As a result, not only is damage to the Bulk-Power System element a concern, but where misoperation and miscoordination is an issue, the stability/reliability of the Bulk-Power System is threatened. While a reclosing relay is not identified as a specific component of the Protection System, if it either is used in coordination with a Protection System to achieve or meet system performance requirements established in other Commission—approved Reliability Standards,[20] or can exacerbate fault conditions when not properly maintained and coordinated,[21] we are concerned that excluding the maintenance and testing of these reclosing relays will result in a gap in the maintenance and testing of relays affecting the reliability of the Bulk-Power System. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose that NERC propose a modification to the Reliability Standard to include the maintenance and testing of reclosing relays affecting the reliability of the Bulk-Power System.

C. Request 4

16. In Request 4, the Working Group asks whether maintenance and testing of the entire DC control circuitry is required under Requirement R1. As discussed above, we understand that maintenance and testing of DC control circuitry includes all components of DC control circuitry necessary for ensuring Reliable Operation. For a Protection System to operate reliably, the DC control circuitry must both have appropriate current carrying capability and be insulated sufficiently to maintain appropriate voltages within the protection system. We are concerned that not establishing the specific requirements relative to the scope and/or methods for a maintenance and testing program for the DC circuitry results in a gap in the maintenance and testing of Protection System components affecting the reliability of the Bulk-Power System. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop a modification to the Reliability Standard to address our concern. Specifically, we propose to direct NERC to develop a modification to the Reliability Standard that explicitly includes maintenance and testing of all DC control circuitry that is necessary to ensure proper operation of the Protection System, including voltage and continuity.

D. Conclusion

17. As discussed above, we propose to accept the proposed interpretation. However, we are concerned that there are gaps in Protection System maintenance and testing, as highlighted by the interpretation. To address our concerns, the Commission proposes to direct NERC to develop modifications to the PRC–005–1 Reliability Standards through its Reliability Standards development process.

[16] *See* NERC Protection System Maintenance, A Technical Reference, September 13, 2007; NERC Protection System Reliability, Redundancy of Protection System Elements, November 2008.

[17] Such auxiliary relays may include lockout relays, timer relays, breaker status relays, and transfer trip output contacts which form the necessary logic and decisions of the Protection System that ultimately result in a trip or reclose of a Bulk-Power System element through the trip coil(s) of the circuit breaker or other interrupting devices.

[18] We further note that the operation of reclosing relays are also used in the derivation of Interconnection Reliability Operating Limits (IROLs) if high speed reclosing is part of the protection scheme associated with the transmission lines, which system operators use in real-time to maintain reliable operation of the Bulk-Power System.

[19] High-speed reclosing is generally not used for certain Bulk-Power System elements, fault types, and conditions, *e.g.,* transformers and underground cables.

[20] For example, they may be needed to meet the performance requirement of the TPL (transmission planning) Reliability Standards.

[21] One such outage occurred in ReliabilityFirst resulting in the loss of over 4,000 MW of generation and multiple 765 kV lines.

V. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[22] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[23]

19. As stated above, the Commission previously approved, in Order No. 693, the Reliability Standard that is the subject of the current Notice of Proposed Rulemaking (NOPR). This NOPR accepts an interpretation of the currently approved Reliability Standard and does not change this standard. The interpretation of the current Reliability Standard at issue in this rulemaking is not expected to change the reporting burden nor impose any additional information collection requirements.

20. For the purposes of reviewing this interpretation, the Commission seeks information concerning whether the interim interpretation as approved will cause respondents to alter reporting frequencies and potentially impose an additional burden.

21. We will submit this proposed rule to OMB for informational purposes.

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

Action: Proposed Collection.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule would approve an interpretation of the specific requirements of a Commission-approved Reliability Standard. The proposed rule would find the interpretation just, reasonable, not unduly discriminatory or preferential, and in the public interest.

22. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, phone: (202) 502–8663, fax: (202) 273–0873, e-mail: *data.clearance@ferc.gov*]. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7345, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*].

VI. Environmental Analysis

23. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[25] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

24. The Regulatory Flexibility Act of 1980 (RFA)[26] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[27] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[28] The RFA is not implicated by this NOPR because the interpretation discussed herein is being accepted. With no changes to the Reliability Standard as approved, the proposal in this NOPR will not have a significant economic impact on a substantial number of small entities.

25. In Order No. 693, the Commission adopted policies to minimize the burden on small entities, including approving the ERO compliance registry process to identify those entities responsible for complying with mandatory and enforceable Reliability Standards. The ERO registers only those distribution providers or load serving entities that have a peak load of 25 MW or greater and are directly connected to the bulk electric system or are designated as a responsible entity as part of a required under-frequency load shedding program or a required under-voltage load shedding program. Similarly, for generators, the ERO registers only individual units of 20 MVA or greater that are directly connected to the bulk electric system, generating plants with an aggregate rating of 75 MVA or greater, any blackstart unit material to a restoration plan, or any generator that is material to the reliability of the Bulk-Power System. Further, the ERO will not register an entity that meets the above criteria if it has transferred responsibility for compliance with mandatory Reliability Standards to a joint action agency or other organization. The Commission estimated that the Reliability Standards approved in Order No. 693 would apply to approximately 682 small entities (excluding entities in Alaska and Hawaii), but also pointed out that the ERO's Compliance Registry Criteria allow for a joint action agency, generation and transmission (G&T) cooperative or similar organization to accept compliance responsibility on behalf of its members. Once these organizations register with the ERO, the number of small entities registered with the ERO will diminish and, thus, significantly reduce the impact on small entities.[29]

26. Finally, as noted above, this NOPR accepts the interpretation of the PRC–005–0 Reliability Standard, which was already approved in Order No. 693, and, therefore, does not create an additional regulatory impact on small entities.

VIII. Comment Procedures

27. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 25, 2011. You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be

[22] 5 CFR 1320.11.

[23] 44 U.S.C. 3507(d).

[24] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[25] 18 CFR 380.4(a)(2)(ii).

[26] 5 U.S.C. 601–612.

[27] 13 CFR 121.201.

[28] *Id.* n.1.

[29] To be included in the compliance registry, the ERO determines whether a specific small entity has a material impact on the Bulk-Power System. If these small entities should have such an impact then their compliance is justifiable as necessary for Bulk-Power System reliability.

submitted by any of the following methods:

• *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

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

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

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

List of Subjects in 18 CFR Part 40

Electric power; Electric utilities; Reporting and recordkeeping requirements by direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32356 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–14–000]

Version One Regional Reliability Standard for Transmission Operations

December 16, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve TOP–007–WECC–1 (System Operating Limits) developed by the Western Electric Coordinating Council (WECC) and submitted to the Commission for approval by the North American Electric Reliability Corporation. The revised regional Reliability Standard would replace the approved WECC TOP–STD–007–0. While we propose to approve the regional Reliability Standard, as discussed in this Notice of Proposed Rulemaking, TOP–007–WECC–1 raises some concerns about which the Commission requests additional information. The Commission also proposes to direct WECC to develop certain limited modifications to the regional Reliability Standard and the associated violation risk factor and violation severity levels as discussed herein.

DATES: Comments are due February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

• *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Mindi Sauter (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6830.

E. Nick Henery (Technical Information), Office of Electric Reliability, Division of Policy Analysis and Rulemaking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8636.

Danny Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8892.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve TOP–007–WECC–1 (System Operating Limits) developed by the Western Electricity Coordinating Council (WECC) and submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards.[2] The revised regional Reliability Standard, designated by WECC as TOP–007–WECC–1,[3] would replace WECC TOP–STD–007–0. While we propose to approve the regional Reliability Standard, we are concerned about certain provisions of TOP–007–WECC–1, about which we request additional information in public

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

[2] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[3] NERC designates the version number of a Reliability Standard as the last digit of the Reliability Standard number. Therefore, original Reliability Standards end with "–0" and modified version one Reliability Standards end with "–1."

comment. The Commission also proposes to direct WECC to develop certain limited modifications to the regional Reliability Standard and the associated violation risk factor and violation severity levels as discussed herein.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

3. Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity to be effective in that region.[5] In Order No. 672, the Commission noted that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.

When the ERO reviews a regional Reliability Standard that would be applicable on an interconnection-wide basis and that has been proposed by a Regional Entity organized on an Interconnection-wide basis, the ERO must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[6] In turn, the Commission must give "due weight" to the technical expertise of the ERO and of a Regional Entity organized on an interconnection-wide basis.[7]

B. WECC Regional Reliability Standards

4. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of eight Regional Entities.[8] In the order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis. As a Regional Entity, WECC oversees Bulk-Power System reliability in the Western Interconnection. The WECC region encompasses nearly 1.8 million square miles, including 14 western U.S. states, the Canadian provinces of Alberta and British Columbia, and the northern portion of Baja California in Mexico.

5. In June 2007, the Commission approved eight regional Reliability Standards that apply in the Western Interconnection, including WECC TOP–STD–007–0.[9] Currently effective WECC TOP–STD–007–0 has the stated purpose of ensuring that the Western Interconnection's operating transfer capability limits requirements are not exceeded. In approving the current regional Reliability Standard, the Commission found that it was more stringent than the corresponding NERC TOP–007–0. The Commission noted that, "[i]n particular, the imposition of a 20-minute limit [maximum for exceeding a stability-limited operating transfer capability] is more restrictive than NERC's TOP–007–0 and is a prudent means of limiting the risk of blackouts, consistent with sound engineering principles."[10]

6. In the June 2007 Order, the Commission also expressed concern that WECC–TOP–007–0 may be inconsistent with NERC IRO–005–1 depending upon the interpretation of IRO–005–1.[11] Previously, in Order No. 693, the Commission discussed the possibility that NERC IRO–005–1 could be interpreted as allowing a system operator to respect interconnection reliability operating limits in two different ways.[12] In the June 2007 Order, the Commission noted that the wording of WECC–TOP–007–0 Requirement WR1.b, which provides that "[t]he interconnected power system shall remain stable upon loss of any one single element without system cascading that could result in the successive loss of additional elements," suggests that WECC expects that stability-limited system operating limits will be addressed in such a manner that the system is two contingencies away from a cascading failure. The Commission noted, however, that Measure WM1 of WECC–TOP–007–0 may not be consistent with Requirement WR1.b, since it states that "[a]ctual power flow on all transmission paths shall at no time exceed the [operating transfer capability] for more than 20 minutes for paths that are stability limited, or more than 30 minutes for paths that are thermally limited."[13] The Commission further stated that the Measure appears more consistent with the less conservative interpretation of the NERC IRO–005–1 and could allow the power system to be operated one contingency away from a cascading outage. Thus, the Commission directed NERC and WECC to: (1) Submit a filing within 30 days of the date of the order explaining whether Requirement WR1.b is consistent with the second interpretation of NERC IRO–005–1 (two contingencies away from cascading failure); (2) clarify any inconsistency between Requirement WR1.b and corresponding Measure WM1; and (3) ensure that the requirements currently set forth in Measures WM1 are set forth in the Standard's Requirements and that corresponding Measures simply quantify the frequency, duration and magnitude of the violations as determined by the Requirements.[14]

7. The Commission also directed WECC to develop modifications to WECC–TOP–STD–007–0 to address certain shortcomings identified by NERC with regard to such matters as format, aligning WECC regional definitions with the NERC Glossary of Terms Used in Reliability Standards, and removing compliance and measure references.[15]

8. In response, NERC submitted a compliance filing (Compliance Filing) on July 9, 2007.[16] NERC explained that "a WECC reliability coordinator must take immediate action, initially through the transmission operators, and then issues directives, to return the system to a secure condition as soon as possible

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[4] *See* 16 U.S.C. 824o(e).

[5] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4).

[6] 16 U.S.C. 824o(d)(3).

[7] 16 U.S.C. 824o(d)(2).

[8] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,060 (2007).

[9] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (2007) (June 2007 Order).

[10] *Id.* P 104.

[11] *Id.* P 105–110.

[12] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 946 (2007), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007). The Commission explained, "IRO–005–1 could be interpreted as allowing a system operator to respect IROLs in two possible ways: (1) Allowing IROL to be exceeded during normal operations, *i.e.,* prior to a contingency, provided that corrective actions are taken within 30 minutes or (2) exceeding IROL only after a contingency and subsequently returning the system to a secure condition as soon as possible, but no longer than 30 minutes. Thus, the system can be one contingency away from potential cascading failure if operated under the first interpretation and two contingencies away from cascading failure under the second interpretation." *Id.* at n. 303.

[13] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 107.

[14] *Id.* P 108–109.

[15] *Id.* P 55, 110.

[16] North American Electric Reliability Corp., Compliance Filing, Docket No. RR07–11–000 (filed July 9, 2007).

after identification of a transfer path exceeding its SOL/IROL" in accordance with WECC procedure RC–003–1, entitled WECC Reliability Coordinator Monitoring and Directive Procedure.[17] NERC continued, stating that "WECC operates its system in such a manner that the system is at least two contingencies away from a cascading failure." NERC further explained that,

> there is no inconsistency between IRO–005–1 and WECC–TOP–STD–007–0. In order to support Requirement WR1.b in the WECC–TOP–STD–007–0 regional Reliability Standard, the system cannot be operated such that a single contingency will cause cascading of the system. This is implicit in the identification of the [operating transfer capability] limit derivation. If, however, there is a flow that exceeds the [operating transfer capability] limit, the transmission operator must take (proactive) immediate corrective action within 20 minutes for stability-limited paths and 30 minutes for thermally limited paths to return the system to below the [operating transfer capability] limit, thus protecting the system from potential cascading for a subsequent contingency.[18]

Proposed WECC Regional Reliability Standard TOP–007–WECC–1

9. On March 25, 2009, NERC submitted a petition to the Commission seeking approval of proposed TOP–007–WECC–1 and requesting the concurrent retirement of the currently effective TOP–STD–007–0.[19] NERC requests an effective date for the proposed regional Reliability Standard of 90 calendar days after receipt of applicable regulatory approval.

10. Proposed TOP–007–WECC–1 would apply to transmission operators for the transmission paths in the most current table titled "Major WECC Transfer Paths in the Bulk Electric System" (WECC Transfer Path Table) located on the WECC Web site.[20] NERC states that the primary purpose of the regional Reliability Standard is to ensure that actual flows and associated scheduled flows on Major WECC Transfer Paths do not exceed system operating limits for more than 30 minutes.

11. NERC states that the proposed regional Reliability Standard satisfies the factors, set forth in Order No. 672, that the Commission considers when determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[21] According to NERC, proposed TOP–007–WECC–1 is clear and unambiguous regarding what is required and who is required to comply with the Standard. NERC states that proposed TOP–007–WECC–1 has clear and objective measures for compliance and achieves a reliability goal (namely, that operating power flows along major paths are within not only interconnection reliability operating limits but also system operating limits) effectively and efficiently. NERC also states that the requirements proposed in TOP–007–WECC–1 are not covered by a NERC Reliability Standard and are intended to be more stringent than or cover areas not covered by the continent-wide NERC Reliability Standard TOP–007–0. NERC also notes that its public posting of the proposed regional Reliability Standard did not elicit any significant technical objection.[22]

12. Proposed TOP–007–WECC–01 contains two requirements and one sub-requirement, summarized as follows:

Requirement R1: Requires a transmission operator of a major WECC transfer path to take immediate action to return actual flows that are in excess of the path's system operating limits to within the system operating limits in no longer than 30 minutes.

Requirement R2: Requires a transmission operator of a major WECC transfer path to ensure that the net scheduled interchange across the path does not exceed the path's system operating limits, when the transmission operator implements its real-time schedules for the next hour.

Sub-requirement R2.1: Requires a transmission operator of a major WECC transfer path to adjust the net scheduled interchange across the path within 30 minutes so that it does not exceed the path's new system operating limit value if the system operating limit decreases within 20 minutes before the start of the hour.

13. In the Petition, NERC asserts that the proposed regional Reliability Standard covers matters not covered by a NERC Reliability Standard and is more stringent than the corresponding continent-wide Reliability Standard, TOP–007–0. NERC explains:

> Whereas, NERC Reliability Standard TOP–007–0—*Reporting SOL and IROL Violations* Requirement R2 requires the Transmission Operator to return its transmission path flows to within Interconnection Reliability Operating Limits ("IROLs") as soon as possible, but no longer than 30 minutes following a contingency or event, TOP–007–WECC–1 Requirement R1 requires the Transmission Operator of the major WECC transfer paths to take immediate action to return the actual power flow to within [system operating limits] such that at no time shall the power flow exceed the [system operating limits] for longer than 30 minutes. There is no NERC requirement to return the transmission system to within [system operating limits] within a time certain, only a requirement to report to the Reliability Coordinator (TOP–007–0 Requirement R1). Depending on the current system conditions, the limits for the paths identified in this TOP–007–WECC–1 standard are [system operating limits]s that would not result in cascading outages. TOP–007–WECC–1 specifically applies to the major paths in the Western Interconnection regardless of whether the limit is defined as an IROL or an [system operating limits]. TOP–007–WECC–1 Requirement R2 requires the Transmission Operator of the major WECC transfer paths to ensure that Net Scheduled Interchange for power flow over an interconnection or transmission path does not exceed the path's [system operating limits] when the Transmission Operator implements its real-time schedules for the next hour. The requirement for maintaining Net Scheduled Interchange within a path's [system operating limits] is also not covered in the NERC Reliability Standards. This requirement is important to the Western Interconnection because scheduling transmission paths beyond their limits could adversely affect actual flows on parallel paths by creating unscheduled flow that may jeopardize system reliability.[23]

14. NERC also provides, as Exhibit C to the NERC Petition, a Record of Development of Proposed Reliability Standard. Included in the approximately 100-page development record is a "mapping document" prepared by the WECC standards drafting team that compares the related provisions of the currently-effective regional Reliability Standard to the modified Standard and discusses the "proposed change and impact."[24]

[17] *Id.* at 5.

[18] *Id.* at 8.

[19] *North American Reliability Corp.,* March 25, 2009 Petition for Approval of Proposed Western Electric Coordinating Council Regional Reliability Standard TOP–007–WECC–1 (NERC Petition). The proposed new Reliability Standards and other modified Reliability Standards are not codified in the CFR and are not attached to the NOPR. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM09–14–000 and are available on the ERO's Web site, *http://www.nerc.com.*

[20] *See* WECC Transfer Path Table, *available at: http://www.wecc.biz/Docs/Documents/Table%20Major%20Paths%204–28–08.doc.* The Transfer Path Table includes a footnote that provides, "[f]or an explanation of terms, path numbers, and definition for the paths refer to WECC's Path Rating Catalog."

[21] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 323–337 (2006), *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[22] NERC Petition at 9.

[23] NERC Petition at 11–12 (footnote omitted).

[24] *See* NERC Petition, Exhibit C, Comparison of WECC Standard TOP–STD–007–0 to proposed WECC Standard TOP–007–WECC–1, beginning at page 86 of the NERC Petition as it appears in the Commission's eLibrary pdf document.

II. Discussion

15. Pursuant to FPA section 215(d)(2), we propose to approve TOP–007–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. As indicated above, the proposed TOP–007–WECC–1 appears to cover topics not covered by the corresponding NERC Reliability Standard, TOP–007–0, thus meeting a criterion for approving a regional difference. Specifically, Requirement R1 would require the transmission operator of a major WECC transfer path to take immediate action to return the actual power flow to within system operating limits such that at no time shall the power flow exceed the system operating limits for longer than 30 minutes. While the NERC Reliability Standards do have a requirement to report exceeding system operating limits to the reliability coordinator, they do not have a requirement to return the transmission system to within system operating limits within a time certain. Likewise, proposed Requirement R2 of the regional Reliability Standard would prohibit the transmission operator from having the net scheduled interchange for power flow over an interconnection or transmission path above the path's system operating limit when the transmission operator implements its real-time schedules for the next hour, while there currently is no such requirement in a NERC Standard. In addition to these stringencies, the proposed regional Reliability Standards addresses modifications directed by the Commission in the June 2007 Order. For these reasons, the Commission proposes to approve TOP–007–WECC–1.

16. However, below, we ask WECC, the ERO and other interested entities to provide further clarification regarding several aspects of the proposed regional Reliability Standard. Our intent in seeking comments is to better understand certain aspects of the proposed regional Reliability Standard that are not fully explained in the NERC Petition. Specifically, we request in comments additional information about the following concerns: (1) Whether the proposed regional Reliability Standard would allow transmission operators to operate the system at a single contingency away from cascading failure for up to 30 minutes; (2) the change in the time allowed to respond to a stability-limited system operating limit violation from 20 to 30 minutes; (3) the substitution of the term "system operating limit" for the term "operating transfer capability"; and (4) replacement of the WECC Transfer Path Table attachment to the regional Reliability Standard with an internet link. The Commission also proposes to direct WECC to develop certain limited modifications to the regional Reliability Standard and the associated violation risk factor and violation severity levels as discussed herein.

A. Operating One Contingency Away From a Cascading Outage

17. As discussed above, when approving TOP–STD–007–0, the Commission noted its concern that Measure WM1 may be interpreted in a way that is less stringent than the NERC IRO–005–1, which, in turn, could allow the system to be operated one contingency away from a potential cascading failure.[25] NERC explained in its July 2007 Compliance Filing that, under Requirement WR1.b of TOP–STD–007–0, transmission operators must operate the system in a manner that it is at least two contingencies away from cascading at all times during steady state operating conditions.[26]

Proposed Regional Reliability Standard

18. Requirement R1 of TOP–007–WECC–1 states, "[w]hen the actual power flow exceeds an [system operating limit] for a Transmission path, the Transmission Operators shall take immediate action to reduce the actual power flow across the path such that at no time shall the power flow for the Transmission path exceed the [system operating limit] for more than 30 minutes." NERC notes that the corresponding NERC Reliability Standard, TOP–007–0 does not currently cover this requirement, explaining that NERC TOP–007–0 does not require the transmission operators to return the transmission system to within system operating limits within a time certain. Therefore, the proposed TOP–007–WECC–1 appears to meet a criterion for approving a regional difference. The proposed TOP–007–WECC–1 does not include the provision of current Requirement WR1, which, in TOP–STD–007–0, requires that "[t]he interconnected power system shall remain stable upon loss of any one single element without system cascading that could result in the successive loss of additional elements." The mapping document included within Exhibit C to the Petition explains that the provision was eliminated because "inclusion would be redundant with similar criteria in other NERC standards," such as NERC FAC–011 (including Regional Differences 1.1 and 1.2), FAC–014, and TOP–004.

Commission Concerns

19. A plain reading of the proposed regional Reliability Standard's Requirement R1 does not explicitly require a transmission operator to operate the system in a manner that is two contingencies from a cascading outage. Specifically, Requirement R1 appears to allow the power flow, during steady state conditions, to exceed a stability-limited system operating limit for up to 30 minutes, which could mean that the system would be one contingency away from a cascading failure for that period of time. Although WECC clarified in its July 2007 Compliance Filing that the WECC transmission grid must be operated such that no cascading occurs following a single contingency, the proposed Reliability Standard does not re-affirm this understanding. Indeed, the proposed regional Reliability Standard could be interpreted as affirmatively permitting the power system to be operated one contingency away from a cascading outage, which is the same concern the Commission raised with respect to the current regional Reliability Standard. Our concern is heightened when Requirement R1 is considered in conjunction with the NERC TOP–004, Requirement R2, which states that "[e]ach Transmission Operator shall operate so that instability, uncontrolled separation, or cascading outages will not occur as a result of the most severe single contingency." Read in this light, the proposed revision to the language currently contained in Requirement WR1 of TOP–STD–007–0 could result in transmission operators having two apparently conflicting sets of operational requirements. Specifically, the national Reliability Standard prohibits operating a single contingency away from cascading outage while the proposed regional Reliability Standard seems to permit such operation. The Commission requests comments on this issue.

B. Change in Response Time From 20 to 30 Minutes

20. TOP–STD–007–0 provides that transmission operators shall return actual flows to within the path's operating transfer capability ratings in no more than 20 minutes on stability-limited paths, and within 30 minutes for thermally-limited paths. When NERC filed TOP–STD–007–0 for Commission approval, WECC explained that the 20 minute time limit for responding to stability-limited operating transfer

[25] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 108.

[26] Compliance Filing at 4.

capability exceedances was based on the lessons learned in the two major disturbances in 1996.[27] The Commission notes that in the Western Interconnection a significant number of transmission paths are voltage or frequency stability limited, in contrast to other regions of the Bulk-Power System where transmission paths more often are thermally limited.[28]

21. Transmission operators generally need to respond to disturbances that result in a "stability-limited" transmission path overload in a shorter time frame than a disturbance that results in a "thermally-limited" transmission path overload because the stability-limited risk is more systemic in nature. The requirement to bring the power flow across a stability-limited transmission path to within the path's operating transfer capability rating within 20 minutes following a disturbance improves reliability by decreasing the likelihood that the Bulk-Power System will be operated a single contingency away from a cascading outage, thus preventing adverse reliability impacts, as following a disturbance.

Proposed Regional Reliability Standard

22. The proposed revised regional Reliability Standard would replace the 20-minute limit for returning actual flows on stability-limited paths to within system operating limit ratings with a 30-minute limit. In its Petition, NERC indicates that the first draft of the proposed regional Reliability Standard included the differing time limits (20/30 minutes) to return to within system operating limit, but that comments indicated that the 10 minute difference was not based on any technically sound reasoning and would create an additional operational step to determine the cause of the limit before taking corrective action. The Petition further indicates that, based on these comments, the drafting team modified the proposed regional Reliability Standard to have one consistent 30 minute limit for returning actual flows to within both thermally and stability-limited system operating limits.

23. In its evaluation of the proposed regional Reliability Standard, NERC's general observation was that proposed TOP–007–WECC–1 was significantly modified from TOP–STD–007–0. Specifically, NERC commented to WECC on the technical modification of the requirement that the actual power flow on all transmission paths shall at no time exceed the operating transfer capability for more than 20 minutes for paths that are stability limited or for more than 30 minutes for paths that are thermally limited.[29] NERC stated that it was unclear whether the proposed requirement was more stringent than the NERC requirements.[30]

24. In response to NERC's evaluation, WECC stated that the currently-effective regional Reliability Standard creates confusion because system conditions may change the limiting conditions on a path, and this resulted in path operators taking "more drastic actions" to respond to a contingency within 20 minutes, which may put the system at greater risk. WECC indicated that the standard drafting team determined that changing the Standard from a 20 to 30 minute response time is "insignificant in terms of the probability of the next contingency occurring." [31]

25. NERC's Petition states that NERC TOP–007–0 does not contain a requirement that transmission operators reduce actual flows to within thermally-limited system operating limits within 30 minutes. Thus, according to NERC, the change from 20 to 30 minutes does not constitute a lowest common denominator approach, but rather provides clarity and eliminates the need to determine the limiting condition when a contingency occurs, thereby allowing transmission operators to concentrate on resolving the overload condition.

Commission Concerns

26. The Commission seeks additional information to assess whether increasing the time to respond to stability-limited system operating limit violations will affect the reliable operation of the Western Interconnection. As the Commission previously has noted, we will evaluate such proposed changes, including those that may make a standard less stringent, on their merit so long as adequate reliability is maintained.[32] In this case, the Commission is proposing to approve TOP–007–WECC–1; however, the technical information provided in the record to date does not demonstrate to our satisfaction that the proposed regional Reliability Standard is sufficient to ensure reliability in the WECC region.

27. Therefore, we request that WECC, NERC and other interested entities provide in their comments an explanation and supporting technical data demonstrating that changing from a 20 to 30 minute response time is "insignificant in terms of the probability of the next contingency occurring." [33] For example, WECC could provide historical outage data showing instances where an event caused a stability-limited operating transfer limit to be exceeded, the amount of time it took the transmission operator to reduce flows and, if the transmission operator did not reduce flows within 20 minutes, whether a second contingency occurred after the 20 minutes. WECC also could provide information or data demonstrating that the WECC region has added facilities to reduce the number of stability-limited "rated transfer paths;" the WECC region has adopted new operational procedures or new protection schemes; or statistical operating data showing that the 20 minute response time was excessive for the Bulk-Power System in the West.

28. Additionally, based on the current record provided by NERC, we are not persuaded by the explanation that the current Reliability Standard's bifurcated response times cause confusion. We understand that, in practice, a transmission operator in the Western Interconnection can use the WECC Path Rating Catalog [34] to determine if a rated system path is either thermally or stability limited for baseline system configurations shown in the Catalog, and will have previously determined operating limitations based on previously conducted contingency studies. The "WECC Philosophy of SOL and IROL Conditions" states that WECC's operating philosophy is to only operate in conditions that have been studied.[35] In fact, during the Reliability Standard development process, one commenter stated that: "[t]oday, we can tell if the 20 or 30 minutes applies based on the statements in the Path Rating Catalog, which classify each of the Paths

[27] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 102.

[28] A stability limit is determined by a voltage or frequency stability constraint, and loading the line above this limit for any amount of time could result in instability and cascading outages. A thermal limit is determined by how much a line can overheat without damaging equipment; lines that are thermally-limited can have short-term emergency limits that are higher than the normal line rating, since heating occurs over a period of time.

[29] NERC Petition at 27–28.

[30] *Id.*

[31] *Id.* at 28.

[32] *Version One Regional Reliability Standard for Resource and Demand Balancing,* 133 FERC ¶ 61,063 at P 30 (2010).

[33] NERC Petition at 28.

[34] As mentioned previously, the WECC Path Rating Catalog is referenced in a footnote in Table 1 of the currently-effective regional Reliability Standard.

[35] WECC Philosophy of SOL & IROL Conditions, *available at http://www.wecc.biz/committees/StandingCommittees/OC/OPS/Lists/Calendar/Attachments/8/WECC%20Philosophy%20of%20SOL-IROL.pdf.*

as either stability limited or thermally limited." [36]

C. System Operating Limit Versus Operating Transfer Capability

29. TOP–STD–007–0 has the stated purpose of ensuring that "the Operating Transfer Capability limits requirements of the Western Interconnection are not exceeded." The regional Reliability Standard defines operating transfer capability as "the maximum value of the most critical system operating parameter(s) which meets: (a) Precontingency criteria as determined by equipment loading capability and acceptable voltage conditions, (b) transient criteria as determined by equipment loading capability and acceptable voltage conditions, (c) transient performance criteria, and (d) post-contingency loading and voltage criteria."

30. The single requirement of TOP–STD–007–0 provides in part:

> Actual power flow and net scheduled power flow over an interconnection or transfer path shall be maintained within Operating Transfer Capability Limits ("OTC"). The OTC is the maximum amount of actual power that can be transferred over direct or parallel transmission elements comprising:
> • An interconnection from one Transmission Operator area to another Transmission Operator area; or
> • A transfer path within a Transmission Operator area.
> The net schedule over an interconnection or transfer path within a Transmission Operator area shall not exceed the OTC, regardless of the prevailing actual power flow on the interconnection or transfer path.

31. The NERC Glossary defines "System Operating Limit" as "the value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. System Operating Limits are based upon certain operating criteria. These include, but are not limited to:

- Facility Ratings (Applicable pre- and post-Contingency equipment or facility ratings)
- Transient Stability Ratings (Applicable pre- and post-Contingency Stability Limits)
- Voltage Stability Ratings (Applicable pre- and post-Contingency Voltage Stability)
- System Voltage Limits (Applicable pre- and post-Contingency Voltage Limits)."

NERC Petition

32. As mentioned above, proposed TOP–007–WECC–1 has the stated purpose of ensuring that "when actual flows on Major WECC Transfer Paths exceed system operating limits (SOLs), their associated schedules and actual flows are not exceeded for longer than a specified time." Requirement R1 of the proposed regional Reliability Standard requires that, "when the actual power flow exceeds a [system operating limit] for a Transmission path, the transmission operator shall take immediate action to reduce the actual power flow across the path.* * *."

33. As noted above, the NERC Petition includes, as Exhibit C, a Record of Development of Proposed Reliability Standard, which includes a mapping document comparing the current regional Standard to the proposed Standard. The mapping document explains the drafting team's actions and rationale for replacing the term "operating transfer capability limit" with the term "system operating limit:"

> Removed definition of OTC and replaced OTC with SOL throughout the standard. Reasons included:
> 1. Consistency with NERC standards, definitions and language.
> 2. WECC Operating Committee adopted the document "WECC Philosophy of SOL & IROL Conditions" which states that a [sic] WECC operates only under SOL conditions. This statement is interpreted as declaring that a WECC OTC is an SOL.
> 3. Removes ambiguity regarding applicability of other NERC standards.[37]

34. The WECC Philosophy of SOL and IROL Conditions, adopted by the WECC Operating Committee, states that "the WECC operating philosophy is to operate only in conditions that have been studied. Therefore, under these normal operating conditions, there are never IROL conditions (only SOL)." [38]

Commission Concerns

35. NERC states that, in addition to addressing the Commission's concerns noted in the June 2007 Order, "WECC made substantial technical modifications to the proposed standard TOP–007–WECC–1 on its own accord." [39] However, NERC does not effectively discuss the scope and substance of these substantial technical modifications. Rather, the NERC Petition explains that "because WECC followed its approved process in developing these modifications NERC continues to rebuttably presume this standard is just, reasonable, and not unduly discriminatory or preferential, and in the public interest." [40] The NERC Petition does not explain the shift from ensuring that operating transfer capability limits are not exceeded to ensuring that system operating limits are not exceeded for longer than a specified time. It appears that the mapping document discussed above provides the only insight in the record into the shift in focus of the proposed regional Reliability Standard from operating transfer capability limits to system operating limits.

36. We have concerns regarding whether it is accurate to equate operating transfer capability limits and system operating limits. The term system operating limit is used in reference to a rated system path within the Western Interconnection and refers to the facility or element that presents the most limiting of the prescribed operating criteria for the rated system path. The most limiting facility or element may be either thermally or stability limited. The operating transfer capability limit corresponds to the "maximum amount of actual power transferred over direct or parallel transmission elements from one transmission operator to another transmission operator." While these two terms relate to the same amount of power that may be transferred from one end of the rated system path to the other, the terms measure different things. When power flow on the facilities or elements that constitute a system operating limit reaches the system operating limit's rating, the amount of power being transmitted across the facilities that constitute the rated system path becomes the operating transfer capability. This becomes problematic when the most limiting operating criteria, i.e., that creates the system operating limit, is not located on the rated system path, but rather is located on a neighboring non-rated system path facility or element.

37. Based on the Commission's understanding that there is a difference in these terms, we are concerned that the facilities that make up the system operating limit may not be part of those facilities that make up the rated system path, i.e., direct or parallel transmission elements comprising: (1) An interconnection from one transmission operator area to another transmission

[36] NERC Petition, Exhibit C at page 50 of the NERC Petition as it appears in the Commission's eLibrary pdf document (Sierra Pacific Resources Transmission comments to WECC).

[37] *See* NERC Petition, Exhibit C, Comparison of WECC Standard TOP–STD–007–0 to proposed WECC Standard TOP–007–WECC–1, beginning at page 86 of the NERC Petition as it appears in the Commission's eLibrary pdf document.

[38] WECC Philosophy of SOL & IROL Conditions, *available at http://www.wecc.biz/committees/StandingCommittees/OC/OPS/Lists/Calendar/Attachments/8/WECC%20Philosophy%20of%20SOL-IROL.pdf.*

[39] NERC Petition at 8.

[40] *Id.*

operator area; or (2) a transfer path within a transmission operator area. When operating transfer capability is replaced by system operating limit, this requirement could result in a transmission operator being responsible for monitoring the flows on transmission system operating limit facilities that may not be on its "rated system path" as shown in the WECC Transfer Path Table and the referenced Path Rating Catalog. The Commission is further concerned that this scenario creates the possibility that an entity to which the regional Reliability Standard applies would be responsible for operating facilities that are not part of the rated path system shown in the WECC Transfer Path Table and Catalog. We request comments from NERC, WECC and other interested parties regarding these concerns.

38. Similarly, we seek comment from NERC, WECC and others regarding the manner in which a transmission operator would address system operating limit facilities that are not part of the rated system path. We also request comments regarding the possibility that transmission operators may, under the proposed regional Reliability Standard, be responsible for facilities that they do not own and which are not on the rated system path but comprise the system operating limit. For commenters who believe that this is a problem, we also request comments regarding how to resolve this potential dilemma.

39. Additionally, we are concerned that the use of the term system operating limit rather than the term operating transfer capability is inconsistent with the WECC Path Rating Catalog and would cause confusion. Historically, WECC has used the term operating transfer capability, and not system operating limit, to describe transmission limitations. Here, it appears that NERC and WECC are using the two terms interchangeably as equivalents. Thus, we request that WECC, NERC and other interested entities provide clarification regarding the proper understanding of the two terms

D. Applicability

40. TOP–STD–007–0 is applicable to transmission owners or operators that maintain transmission paths listed in the WECC Transfer Path Table, which is included as Attachment A to the Reliability Standard. The attachment identifies 40 major transmission paths in the Western Interconnection.

Proposed Regional Reliability Standard

41. Proposed TOP–WECC–007–1 removes Attachment A and, instead, directs transmission owners to the most current WECC Transfer Path Table, which is available on the WECC Web site. The table currently posted on the WECC Web site identifies the same 40 major paths as Attachment A to the approved regional Reliability Standard.

42. The Petition does not explain why WECC moved the WECC Transfer Path Table from an attachment to a reference accessed through the WECC Web site. However, the mapping document discussed above states that: "[a]s an attachment to the standard, revisions to [the WECC Transfer Path Table] must be made through the standards process. By making [the WECC Transfer Path Table] a changing the [sic] referenced document in the WECC library, it opens the possibility of the table being changed through a WECC process without the need for changing the standard itself (for example, by recommendation of the OTCPC and approval by the Board)." In response to a stakeholder question during the development process, WECC indicated its belief that, under the proposed Standard, WECC Board approval would be required for changes to the Table, but NERC and Commission approvals would not be required.[41]

Commission Concerns

43. The Commission is concerned that by referencing the WECC Transfer Path Table hosted on the WECC Web site, the applicability of TOP–007–WECC–1 could change without Commission and industry notice and opportunity to respond. Under the currently-effective regional Reliability Standard, modifications to the WECC Transfer Path Table must be approved by the Commission. Accordingly, the Commission seeks comment on how NERC and WECC intend to develop and provide notice of proposed changes to the WECC Transfer Path Table. We also seek comment on how NERC and WECC will ensure that any resulting changes to the applicability of the Reliability Standard will not reduce its effectiveness. The Commission also requests comment regarding whether the current WECC regional Reliability Standards or related documents include the criterion that governs when paths are added or removed from the WECC Transfer Path Table and requests further information on the scope and application of the criterion.

44. Additionally, under section 215(d)(5) of the FPA, we propose to direct WECC to develop a modification to the Reliability Standard to address our concern. For example, WECC could include its criterion for identifying and modifying major transmission paths listed in the WECC Transfer Path Table and referenced Path Rating Catalog in the Reliability Standard, and make an informational filing with the Commission and NERC each time it makes a modification to the table or referenced catalog. Another option would be for WECC to file its criterion with the Commission and post revised transfer path tables and referenced catalogs on its Web site before they become effective with concurrent notification to NERC and the Commission. Alternatively, WECC could include the WECC Transfer Path Table as an attachment to the modified Reliability Standard. In this way, the Commission would be able to verify that the Regional Entity is applying the requirements of the regional Reliability Standard in a just and reasonable manner.

E. Violation Risk Factors

45. As part of its compliance and enforcement program, NERC must assign a "lower," "medium," or "high" violation risk factor to each requirement of each mandatory Reliability Standard to associate a violation of the Requirement with its potential impact on the reliability of the Bulk-Power System. In the June 2007 Order approving TOP–STD–007–0, the Commission noted that WECC's existing sanctions table was inconsistent with NERC's Sanction Guidelines, and directed WECC to develop violation risk factors that conform to corresponding NERC Reliability Standards.[42]

Proposed Regional Reliability Standard

46. TOP–007–WECC–1 includes violation risk factors for both of the requirements, without a separate violation risk factor for sub-requirement R2.1.

Commission Concerns

47. TOP–007–WECC–1 and its continent-wide counterpart, NERC TOP–007–0, share the same reliability objective: To require transmission operators to take corrective action to reduce the amount of power flowing on a transmission path when it exceeds system operating limits or interconnection reliability operating limit to below the system operating limit or interconnection reliability operating limit and thereby minimize

[41] NERC Petition, Exhibit C, at page 51, 53 of the NERC Petition as it appears in the Commission's eLibrary pdf document (reply to questions from Sierra Pacific Resources Transmission and Bonneville Power Administration).

[42] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 54.

the amount of time the Bulk-Power System is operating one contingency away from a cascading outage. In its Petition, NERC does not explain why WECC assigned violation risk factors to the proposed Reliability Standard that differ from the corresponding continent-wide Reliability Standard's violation risk factors.[43]

48. We have noted previously that we expect consistency among violation risk factor assignments of Requirements that share the same reliability objective.[44] Therefore, the Commission seeks comment from NERC and WECC regarding why the proposed regional Reliability Standard contains violation risk factors that are not aligned with those of the continent-wide Reliability Standard. The Commission proposes to direct WECC to modify the assigned violation risk factor for TOP–007–WECC–01, Requirements R1 and R2 from "medium" and "low," respectively, to "high" and requests comment on this proposal.

F. Violation Severity Levels

49. NERC, in its July 30, 2008 evaluation of WECC's proposed Reliability Standard, noted that the violation severity levels in the proposed Reliability Standard do not conform to NERC's format.[45]

Proposed Regional Reliability Standard

50. NERC has adopted a standard violation severity level table format that is used in its Reliability Standards, which also should be used in all regional Reliability Standards. In its evaluation of the proposed regional Reliability Standard, NERC noted that violation severity levels do not conform to the NERC format. The NERC Petition notes that WECC agreed to address the formatting issue during the next revision of the regional Reliability Standard.

Commission Proposal

51. The Commission agrees with NERC's comments, and proposes to direct WECC to modify the violation severity levels associated with each requirement and sub-requirement of TOP–007–WECC–1, and submit them in the approved table format.

III. Information Collection Statement

52. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[46] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[47] As stated above, the Commission previously approved the regional Reliability Standard that is the subject of the current rulemaking. In the event that the Commission, after receiving comments, determines to adopt the proposed revisions to the Reliability Standard, they would not substantially change the entities' current reporting burden. Thus, the current proposal would not substantively affect the burden estimates relating to the currently effective version of the Reliability Standard previously approved.[48]

53. The proposed TOP–007–WECC–1, which would replace TOP–STD–007–0, does not modify or otherwise affect the burden related to the collection of information already in place. Thus, the proposed modifications to the current Reliability Standard will neither increase the reporting burden nor impose any additional information collection requirements.

54. The Commission does not foresee any additional impact on the reporting burden for small businesses, because the proposed modifications do not increase the existing burden. However, we will submit this proposed rule to OMB for review.

Title: Version One Regional Reliability Standard for Transmission Operations.

Action: Proposed Collection FERC–725E.

OMB Control No.: 1902–0246.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: This proposed rule proposes to approve the requested modifications to a regional Reliability Standard pertaining to System Operating Limits. The proposed Reliability Standard is one of the standards that helps ensure the reliable operation of the Western Interconnection.

Internal Review: The Commission has reviewed the proposed Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for System Operating Limits as well as procedures within the energy industry.

55. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, phone:* (202) 502–8663, *fax:* (202) 273–0873].

56. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by e-mail to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM09–14 and OMB Control Number 1902–0246.

IV. Environmental Analysis

57. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[49] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[50] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

58. The Regulatory Flexibility Act of 1980 (RFA)[51] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small

[43] *See* violation risk factors for TOP–007–0.

[44] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 16, 25 (2007).

[45] NERC Petition at 29.

[46] 5 CFR 1320.11.

[47] 44 U.S.C. 3507(d).

[48] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 125–131.

[49] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[50] 18 CFR 380.4(a)(2)(ii).

[51] 5 U.S.C. 601–612.

business.[52] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[53] The RFA is not implicated by this proposed rule because the modification discussed herein will not have a significant economic impact on a substantial number of small entities. Moreover, the proposed Reliability Standards reflect a continuation of existing requirements for these reliability entities. Accordingly, no regulatory flexibility analysis is required.

VI. Comment Procedures

59. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 25, 2011. Comments must refer to Docket No. RM09–14–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

60. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

61. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

62. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

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

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

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32357 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

[52] 13 CFR 121.101

[53] 13 CFR 121.201, Sector 22, Utilities & n. 1.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB75

Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to revise its requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines. The proposed rule would require operators to identify violations of mandatory health or safety standards. The proposal would also require that the mine operator record and correct violations and review with mine examiners (*e.g.,* the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The proposal would assure that underground coal mine operators find and fix violations of mandatory health or safety standards, thereby improving health and safety for miners.

DATES: MSHA must receive comments by midnight Eastern Standard Time on February 25, 2011.

ADDRESSES: All submissions must reference MSHA and RIN 1219–AB75. Comments may be submitted by any of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic Mail: zzMSHA-Comments@dol.gov.* Include "RIN 1219–AB75" in the subject line of the message.

(3) *Facsimile:* (202) 693–9441. Include "RIN 1219–AB75" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Sign in at the receptionist's desk on the 21st floor.

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with "RIN 1219–AB75" and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for MSHA. Comments to MSHA may be transmitted by any of the methods listed above in this section.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: The outline of this proposal is as follows:

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IX. References

I. Introduction

A. Availability of Information

Public Comments: MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov/regsinfo.htm.* Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

E-mail notification: MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

B. Statutory and Regulatory History

Sections 303(d)(1), (e), and (f) of the Federal Mine Safety and Health Act of 1977 (Mine Act) retained without change the language of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) setting forth requirements for pre-shift, on-shift, and weekly examinations. The Coal Act required that pre-shift examinations be conducted by certified examiners within three hours prior to the next shift. Section 303(d)(1) of the Mine Act required pre-shift examinations for specified hazards and for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require (30 U.S.C. 863(d)(1)). The pre-shift examination generally addressed evaluating the effectiveness of the mine's ventilation system and detecting potential hazards such as methane accumulations, water accumulations, and adverse roof conditions.

Section 303(e) required on-shift examinations for hazardous conditions (30 U.S.C. 863(e)). Like the preshift examination, the on-shift examination was included to identify hazards that developed during the shift. Generally, the on-shift examination included tests for methane and oxygen deficiency, an examination for hazardous conditions such as adverse roof conditions, and air measurements at specified locations.

Section 303(f) required weekly examinations for hazardous conditions, including compliance with the mandatory health or safety standards (30 U.S.C. 863(f)). The weekly examination was directed at hazards that developed in remote and less frequently traveled areas of the mine such as worked-out areas and bleeder entries (areas that carry away methane). For example, methane could accumulate in these areas which could result in an explosion if not discovered and corrected.

On November 20, 1970, MSHA issued a final rule for Preshift Examination, On-Shift Examinations for Hazardous Conditions, and Weekly Examinations for Hazardous Conditions (30 CFR 75.303, 304, and 305 (35 FR 17890)). The final rule restated the statutory provisions of the Coal Act (as retained in the Mine Act).

On January 27, 1988 (53 FR 2382), MSHA issued a proposed rule to revise the requirements for preshift, on-shift, and weekly examinations and add a new requirement for supplemental examinations. After evaluating the comments, MSHA issued a final rule on May 15, 1992 (57 FR 20868). Neither the proposed rule nor the final rule included a requirement that mine examiners check for violations of mandatory health or safety standards.

On May 19, 1994, MSHA proposed revisions to the preshift examination requirement (59 FR 26356) to require that the examination include violations of mandatory health or safety standards that could result in a hazardous condition. The preamble to the proposed rule stated that by placing the mine operator in a proactive rather than a reactive role, the proposal would have the potential to enhance safety by identifying a condition before a hazard exists.

MSHA published a final rule on March 11, 1996 (61 FR 97640). In response to comments, the final rule did not include the proposed requirement that a preshift examination include examining for violations of mandatory health or safety standards, stating the Agency's intent to focus the attention of the examiner on critical areas so that the examiner could identify conditions that pose a hazard to miners.

II. Background Information

Underground coal mines are dynamic work environments where the working conditions change rapidly and without warning. Diligent compliance with safety and health standards and safety conscious work practices provide a substantial measure of protection against mine accidents and emergencies.

Examinations are the first line of defense for miners working in underground coal mines and are necessary to protect miners. At the beginning of the shift, miners in an underground coal mine are particularly vulnerable to hazards and conditions in the workplace that developed during the prior shift; the preshift and supplemental examinations are intended to protect them. The proposal would require that pre-shift and supplemental examinations include violations of mandatory health or safety standards. The existing standard requires operators to identify and record hazardous conditions. It further requires that a hazardous condition be corrected immediately or the area remain posted with a conspicuous danger sign where anyone entering the area would pass. Under the proposal, MSHA would continue its practice under the existing standard that operators prioritize and correct violations based on the seriousness of the hazard.

Under the proposed standards, MSHA intends that examiners who conduct on-shift examinations identify and

correct hazardous conditions and violations of mandatory health or safety standards that arise during the miners' shift. MSHA also intends that weekly examiners identify and correct hazardous conditions and violations of mandatory health or safety standards during their required examinations as well. Therefore, MSHA is proposing that all required examinations be conducted in an effective and consistent manner to assure that hazardous conditions and violations of mandatory health or safety standards are timely identified and corrected.

Consistent with the Mine Act, the proposal would add a requirement that examiners conducting preshift, supplemental, on-shift, and weekly examinations identify and correct violations of mandatory health or safety standards. Under the proposal, operators would also have to record these violations, and the actions taken to correct them.

The proposal would also add a new requirement that mine operators review with mine examiners (*e.g.* the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The proposal would require that certified mine examiners conduct more complete and thorough examinations, thereby providing a greater level of protection for underground coal miners.

MSHA reviewed accident investigation reports and the Agency's enforcement data on underground coal mines and concluded that the Agency needed to propose changes to the existing examination requirements for underground coal mines. By reviewing records and data over a 5-year period, MSHA determined that the same types of violations of mandatory health or safety standards are found by MSHA inspectors in underground coal mines every year. These repeated violations expose miners to unnecessary safety and health risks that should be found and corrected. Violations for accumulations of combustible materials, ventilation and roof control plans, and maintenance of incombustible content of rock dust are the top ten cited safety standards year after year. These standards accounted for about 40 percent of the total violations at underground coal mines in 2009. Under the proposal, MSHA intends that an examiner looking for violations of mandatory health or safety standards would identify these types of violations. MSHA data reveals that citations are routinely issued for improperly constructed airlock doors or improperly maintained ventilation controls. Absent other conditions, such as an accumulation of combustible materials and a misaligned conveyor belt, an operator might not consider these to be hazardous conditions. However, conditions in underground coal mines change rapidly—roof that appears adequately supported can quickly deteriorate and fall; stoppings can crush out and short-circuit air currents; conveyor belts can become misaligned or belt roller bearings can fail, resulting in an ignition source; and methane can accumulate in areas where it may not have been detected. To assure optimum safety of miners, it is imperative that operators find violations of health or safety standards, correct them, and record corrective actions taken.

MSHA does not intend that the proposal would significantly change the general scope of examinations under the existing standards. Examiners would not be required to perform additional tests, take additional measurements, or open and examine equipment or boxes. In accordance with the proposed rule, mine examiners would have to note violations and record them in the examination records and the operator would have to assure they are corrected. The top 10 standards cited by MSHA inspectors are the types of violations that well-trained and qualified examiners can observe while conducting effective examinations.

III. Section-by-Section Analysis

A. Section 75.360 Preshift Examination at Fixed Intervals

The proposed rule would revise the existing preshift examination standard to: (1) Add a requirement for operators to check for violations of mandatory health or safety standards; (2) require that examinations the District Manager may require in other areas of the mine include examining for violations of mandatory health or safety standards; and (3) expand the existing recordkeeping requirements to include violations of mandatory health or safety standards. The proposed rule would make conforming changes to the existing requirement that allows pumpers, who are certified persons, to perform the preshift examination for themselves. Under the proposal, examinations conducted by pumpers would include identifying violations of mandatory health or safety standards.

B. Section 75.361 Supplemental Examination

The proposal would revise the supplemental examination standard to require the operator to identify violations of mandatory health or safety standards. Under the existing standard, before any person enters an area that did not have a preshift examination, a certified person must perform a supplemental examination to identify hazardous conditions. This proposed change would require that examiners conducting supplemental examinations identify hazardous conditions and violations of mandatory health or safety standards to provide necessary protection for miners.

C. Section 75.362 On-Shift Examination

The proposal would revise the on-shift examination standard to require the operator to identify violations of mandatory health or safety standards during any shift when anyone is assigned to work on the section and where mechanized mining equipment is being installed or removed. The existing standard only requires examinations for hazardous conditions.

D. Section 75.363 Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting, and Recording

The proposal would revise the existing standard for correcting, posting, and recording hazardous conditions. The proposal would require the operator to correct all violations of mandatory health or safety standards found during preshift, supplemental, on-shift, and weekly examinations. Under the proposal, operators would have to correct violations within a reasonable time. For example, during the preshift examination, an operator may determine that it is necessary to purchase a piece of equipment to fix a violation and that it may take two days to get the equipment. Assuming that the violation does not pose a hazard to miners, the two days would generally be considered reasonable. The existing standard only requires the operator to correct hazardous conditions.

The proposal would also require that violations of mandatory health or safety standards found during the examinations, and the corrective actions taken, be recorded. The existing standard only requires a record for hazardous conditions.

The proposal would also add a new provision that would require that the operator review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons), on a quarterly basis, all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. This

proposed requirement is intended so that operators can reinforce with all examiners the types of violations and conditions that they should be identifying during their examinations to determine if there are systemic problems. The proposal would improve the quality of these vital examinations and complement an effective mine safety and health management program.

E. Section 75.364 Weekly Examination

The proposal would revise the weekly examination standard to require the weekly examiner to identify violations of mandatory health or safety standards. Under the existing rule, the weekly examiner is required to examine for hazardous conditions. The proposal includes conforming changes to the existing requirements related to correcting and recording hazardous conditions to require correcting and recording violations of mandatory health or safety standards.

F. Rationale for the Proposed Changes

The proposed changes to all five standards in this rulemaking provide a more protective approach to conducting examinations in underground coal mines. The proposal would require mine operators to identify, correct, and record violations, and record corrective actions. Under the existing standards, operators observe conditions and only record and note corrective actions for hazardous conditions. The conditions that they do not believe are hazardous do not have to be recorded or corrected at the time of the examination.

MSHA reviewed all of the accident investigation reports involving fatalities from 2005 through 2009 where an inadequate examination of the underground work area was determined to have contributed to the accident. In addition, the agency reviewed citations and orders for non-fatal accidents for the same period where an inadequate examination of the underground work area contributed to the accident. MSHA determined that in 20 of these accidents, although the examiner did not identify a hazardous condition, the conditions involved a violation of a mandatory health or safety standard. Had the examiner identified these violations and corrected the conditions, the accident could have been prevented. (The details of MSHA's analysis are presented in the discussion of benefits.) These accident reports and citation and order narratives are included in the rulemaking docket and can be examined at the address listed in the **ADDRESSES** section of this notice. They may also be viewed at *http://www.msha.gov* or *http://www.regulations.gov.*

The proposal would require operators to be more proactive in their approaches to mine health and safety, and find and fix hazardous conditions and violations of mandatory health or safety standards. As a result, conditions that might have been identified only by MSHA inspectors would now be found and corrected by the operator. Under the existing standards violations may go undetected and uncorrected because operators do not believe that they constitute hazardous conditions.

The proposed rule would require the operator to be more proactive in creating a culture of safety at the mine. It would enhance miners' safety because violations of health or safety standards would be identified and corrected, removing many of the conditions that could lead to danger in underground coal mines. MSHA solicits comments on other alternatives for assuring that operators examine for violations of mandatory health or safety standards, record and correct violations, and review violations with examiners.

IV. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (E.O.) 12866 (58 FR 51735), a significant regulatory action is subject to review by the Office of Management and Budget (OMB) and the requirements contained in the Executive Order. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The proposed rule does not have an annual effect of $100 million or more on the economy and is not an economically "significant regulatory action" pursuant to section 3(f) of E.O. 12866. The proposed rule raises novel, legal or policy issues and is therefore subject to OMB review. MSHA requests comments on all the estimates of costs and benefits presented in this proposed rule.

MSHA has not prepared a separate preliminary regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Population at Risk

The proposed rule applies to all underground coal mines in the United States. There are approximately 424 active underground coal mines employing 47,204 miners, excluding office workers. Table 1 presents the number of underground coal mines and employment.

TABLE 1—UNDERGROUND COAL MINES AND MINERS, 12 MONTH AVERAGE AS OF JANUARY 2010 BY EMPLOYMENT SIZE

Mine size	Number of UG coal mines	Total employment at underground mines, excluding office workers
1–19 Employees	81	1,179
20–500 Employees	331	29,432
501+ Employees	12	9,708
Contractors		6,885
Total	424	47,204

Source: MSHA MSIS Data (March 2010).

Underground coal mines produced an estimated 332 million short tons of coal in 2009. The average price of coal in underground mines in 2008 was $51.35 per short ton (Department of Energy (DOE), Energy Information Administration (EIA), *Annual Coal Report 2008,* October 2009, Table 28).

Table 2 presents coal production and estimated revenues for 2009.

TABLE 2—COAL PRODUCTION IN SHORT TONS AND COAL REVENUES IN 2009 FOR UNDERGROUND COAL MINES

Mine size	Coal production (millions of short tones)	Coal revenue (millions of dollars)
1–19 Employees	5.0	258.6
20–500 Employees	236.6	12,147.7
500+ Employees	90.3	4,634.6
Total	331.9	17,0401.1

B. Benefits

One of MSHA's primary goals with this rulemaking is to reduce violations of mandatory health or safety standards that occur in underground coal mines year after year. These violations ultimately lead to accidents, injuries and illnesses. This section presents a summary of the potential benefits resulting from proposed changes to requirements for preshift, supplemental, on-shift, and weekly examinations in underground coal mines. To estimate the potential benefits, as stated earlier, MSHA reviewed all 64 fatal accident investigation reports from 2005 through 2009. In addition, the agency reviewed citations and orders for non-fatal accidents for the same period where an inadequate examination of the underground work area contributed to the accident.

Over the five year review period, there were 91 fatalities in underground coal mines. Of this total, the investigation reports for 15 of the fatalities specifically listed violations of the preshift, supplemental, on-shift, or weekly examinations as contributing factors to the accident. While these fatalities involved hazardous conditions and should have been prevented by a proper examination in accordance with the existing standards, the mine examiners did not identify the conditions as being hazardous prior to the fatal accidents. The proposed rule would require the identification and correction of violations of mandatory health and safety standards, which involves less subjective judgment on the part of mine examiners than determining whether conditions are hazardous. After analysis of the 15 fatalities, MSHA determined that 9 of them involved violations of mandatory health or safety standards and could have been prevented by a proper examination in accordance with the proposed rule. Thus, MSHA estimates that if the violations of mandatory health or safety standards were identified as required by the proposed rule, these 9 fatalities, or approximately two fatalities per year (9 fatalities/5 years) could have been prevented through necessary corrective actions.

The fatalities reported above specifically listed violations of the preshift, supplemental, on-shift, or weekly examinations as contributing factors to the accident. MSHA also examined the fatal investigation reports that did not list violations of the preshift, supplemental, on-shift or weekly examinations as contributing factors to the accident to determine if a violation of any of the top 10 cited standards were listed as a contributing cause of the accident. MSHA's review included the following 10 health and safety standards that are most cited by MSHA inspectors year after year:

- *§ 75.202(a).* The roof, face, and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts.
- *§ 75.220(a)(1).* Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.
- *§ 75.333(h).* All ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.
- *§ 75.370(a)(1).* The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine * * *.
- *§ 75.400.* Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel-powered and electric equipment therein.
- *§ 75.403.* Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum * * *.
- *§ 75.1403.* Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.
- *§ 75.1722(a).* Gears; sprockets; chains; drive, head, tail, and take-up pulleys; flywheels; couplings, shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded.
- *§ 75.1725(a).* Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery and equipment in unsafe condition shall be removed from service immediately.
- *§ 75.1731(a).* Damaged rollers, or other damaged belt conveyor components, which pose a fire hazard must be immediately repaired or replaced. All other damaged rollers, or other damaged belt conveyor components, must be repaired or replaced.

Based upon the Agency's review of these reports, MSHA determined that three additional fatalities could have been prevented by the proposed rule by identifying violations of mandatory health or safety standards and making necessary corrective actions. Thus MSHA estimates that the proposed rule could have prevented a total of up to 12 fatalities (nine where an inadequate examination was listed as a contributing factor and three where violations of any of the top 10 cited standards was listed as a contributing factor), or approximately five fatalities every two years. During the five-year review period, there were 91 fatalities in underground coal mines. MSHA estimates the proposed rule could have prevented 13 percent of those fatalities

(12/91 fatalities). The fatal investigation reports for all 12 fatalities are included in the rulemaking docket and can be examined at the address listed in the **ADDRESSES** section of this notice. They may also be viewed at *http://www.msha.gov* or *http://www.regulations.gov*.

In addition to reducing the number of fatalities, the proposed rule would reduce the number of injuries. To estimate the number of injuries that would be prevented for the period 2005 through 2009, MSHA reviewed the descriptions of 75 accidents involving 90 non-fatal injuries where the citation or order listed some combination of an inadequate examination or one of the top 10 cited standards as a contributing cause of the accident. MSHA determined that the proposed rule would have prevented 32 nonfatal injuries. Thus MSHA estimates that the proposed rule would have prevented approximately 13 non-fatal injuries every two years (32 non-fatal injuries/5 years).

MSHA believes that the proposed rule would also reduce respirable dust exposures in underground coal mines. According to a recent NIOSH report:

> Respirable dust exposure has long been known to be a serious health threat to workers in many industries. In coal mining, overexposure to respirable coal mine dust can lead to coal workers' pneumoconiosis (CWP). CWP is a lung disease that can be disabling and fatal in its most severe form. In addition, miners can be exposed to high levels of respirable silica dust, which can cause silicosis, another disabling and/or fatal lung disease. Once contracted, there is no cure for CWP or silicosis. The goal, therefore, is to limit worker exposure to respirable dust to prevent development of these diseases * * *. The tremendous human and financial costs resulting from CWP and silicosis in the U.S. underground coal mine workforce are shown by the following statistics:
>
> • During 1970–2004, CWP was a direct or contributing cause of 69,377 deaths of U.S. underground coal mine workers.
>
> • During 1980–2005, over $39 billion in CWP benefits were paid to underground coal miners and their families.
>
> • Recent x-ray surveillance data for 2000–2006 show an increase in CWP cases. Nearly 8% of examined underground coal miners with 25 or more years of experience were diagnosed with CWP * * *.
>
> Ventilating air to a * * * mining section, whether blowing or exhausting, is the primary means of protecting workers from overexposure to respirable dust." (NIOSH 2010)

Mine examinations are critical to ensuring that all of the requirements in the mine ventilation plan, including the dust control plan, are in place and working. Examiners check section and outby ventilation controls and the respirable dust control parameters which are key factors in reducing miners' exposure to respirable coal mine dust. MSHA believes that the proposal could provide better identification and correction of violations of the ventilation standards. This could lower miners' exposure to respirable coal mine dust, thereby lowering the incidence of black lung and other respiratory diseases. However, MSHA is addressing reducing miners' exposure to respirable coal mine dust in a separate rulemaking (RIN 1219–AB64, 75 FR 64412). Due to lack of data, MSHA is unable to incrementally quantify the reduced incidence of disease attributable to this proposed rule alone. The number of fatalities and injuries that may be prevented by this proposed rule may be understated or overstated. MSHA requests comments on the Agency's estimate of benefits, as well as supporting data.

Below MSHA provides estimates monetizing the potential benefits of the proposed rule for informational purposes only. Under the Mine Act, MSHA is not required to use monetized benefits or estimated net benefits as the basis for its decision.

MSHA based its estimates of the monetary values for the benefits associated with the proposed rule on relevant literature. To estimate the monetary values of these reductions in cases, MSHA performed an analysis of the imputed value of fatalities avoided based on a willingness-to-pay approach. This approach relies on the theory of compensating wage differentials (*i.e.,* the wage premium paid to workers to accept the risk associated with various jobs) in the labor market. A number of studies have shown a correlation between higher job risk and higher wages, suggesting that employees demand monetary compensation in return for incurring a greater risk of injury or fatality.

Viscusi & Aldy (2003) conducted an analysis of studies that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs (*i.e.,* meta-analysis) and found that each fatality avoided was valued at approximately $7 million and each lost work-day injury was approximately $50,000 in 2000 dollars. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of $8.7 million for each fatality avoided and $62,000 for each injury avoided in 2009 dollars. This value of a statistical life (VSL) estimate is within the range of the substantial majority of such estimates in the literature ($1 million to $10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003).

Although MSHA is using the Viscusi & Aldy (2003) study as the basis for monetizing the expected benefits of the proposed rule, the Agency does so with several reservations, given the methodological difficulties involved in estimating the compensating wage differentials (*see* Hintermann, Alberini and Markandya, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by coal miners. For example, some have suggested that VSL models be disaggregated to account for different levels of risk, as might occur in coal mining (*see* Sunstein, 2004). In addition, coal miners may have few options of alternative employers and in some cases only one employer (near-monopsony or monopsony) that may depress wages below those in a more competitive labor market.

MSHA recognizes that monetizing the VLS is difficult and involves uncertainty and imprecision. In the future, MSHA plans to work with other agencies to refine the approach taken in this proposed rule.

Based upon the estimated prevention of 2.4 fatalities and 6.4 lost-time injuries per year, MSHA estimates that the proposed rule could result in monetized benefits of up to $21.3 million per year ($2.4 \times \$8.7$ million + $6.4 \times \$62{,}000$).

C. Compliance Costs

TABLE 3—SUMMARY OF ANNUAL COSTS TO UNDERGROUND COAL MINE OPERATORS

Requirement	Number of employees			Totals
	1–19	20–500	501+	
75.360 PreShift Exam	$690,000	$8,410,000	$530,000	$9,630,000
75.361 Supplemental Exam	3,000	70,000	3,000	76,000
75.362 On-Shift Exam	340,000	4,210,000	270,000	4,820,000
75.363(e) Review of Citations and Orders	24,000	411,000	92,000	557,000

TABLE 3—SUMMARY OF ANNUAL COSTS TO UNDERGROUND COAL MINE OPERATORS—Continued

Requirement	Number of employees			Totals
	1–19	20–500	501+	
75.364 Weekly Exam	36,000	150,000	5,000	191,000
Totals	1,093,000	13,281,000	900,000	15,274,000

Based on experience, MSHA estimates the preshift and on-shift examinations would be conducted by a supervisory certified examiner (paid an hourly rate of $84.70, including benefits). The supplemental and weekly examinations would be conducted by non-supervisory certified examiners (paid an hourly rate of $35.30, including benefits).

Preshift Examination at Fixed Intervals—Proposed § 75.360

Under existing § 75.360, MSHA estimated that it would take an examiner at a typical small mine 2 hours to complete a preshift examination and an examiner at a typical large mine 3 hours to complete the preshift examination. Proposed § 75.360 would require examiners conducting preshift examinations to identify violations of mandatory health or safety standards, and record the violations found along with the corrective actions taken. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a supervisory wage of $84.70 an hour (includes benefits), an additional 30 minutes (0.5 hrs) per preshift examination to identify violations and record them along with the corrective actions taken. MSHA estimates that mines with 1–19 employees operate 200 days per year; 20–500 employees, 300 days per year; and 501+ employees, 350 days per year. MSHA also estimates there would be 1 exam per day at mines with 1–19 employees, 2 exams per day at mines with 20–500 employees, and 3 exams per day at mines with 501+ employees.

This would result in estimated costs of $9.6 million: $686,100 in mines with 1–19 employees (81 mines × 1 exam per day × 200 days a year × 0.5 hours × $84.70 per hour); $8.4 million in mines with 20–500 employees (331 mines × 2 exams per day × 300 days a year × 0.5 hours × $84.70 per hour); and $533,600 in mines with 501+ employees (12 mines × 3 exams per day × 350 days a year × 0.5 hours × $84.70 per hour).

Supplemental Examination—Proposed § 75.361

Under existing § 75.361, MSHA estimated that it would take an examiner at a typical mine 0.5 hours to complete a supplemental examination. Proposed § 75.361 would require examiners conducting supplemental examinations to identify violations of mandatory health or safety standards. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a non-supervisory wage of $35.30 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. Supplemental examinations are only performed in areas where a preshift examination has not been conducted. MSHA estimates that examiners would perform supplemental examinations 4 times per year at mines with 1–19 employees and 24 times per year at mines with 20–500 employees and 501+ employees.

This would result in estimated costs of $75,500: $2,900 in mines with 1–19 employees (81 mines × 4 exams per mine × 0.25 hours per exam × $35.30 per hour); $70,100 in mines with 20–500 employees (331 mines × 24 exams per mine × 0.25 hours per exam × $35.30 per hour); and $2,500 in mines with 501 + employees (12 mines × 24 exams per mine × 0.25 hours per exam × $35.30 per hour).

On-shift Examination—Proposed § 75.362

Under existing § 75.362, MSHA estimated that it would take an examiner at a typical small mine 450 minutes (0.67 hours) to complete an on-shift examination and an examiner at a typical large mine 45 minutes (0.75 hours) to complete the on-shift examination. Proposed § 75.362 would require examiners conducting on-shift examinations to identify violations of mandatory health or safety standards. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a supervisory wage of $84.70 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. On-shift examinations are performed during each working shift. MSHA estimates that there is 1 shift per day at mines with 1–19 employees; 2 shifts per day at mines with 20–500 employees; and 3 shifts per day at mines with 501+ employees. MSHA estimates that mines with 1–19 employees operate 200 days per year; 20–500 employees, 300 days per year; and 501+ employees, 350 days per year.

This would result in estimated costs of $4.8 million: $343,000 in mines with 1–19 employees (81 mines × 1 shift per day × 200 days per year × 0.25 hours per shift × $84.70 per hour); $4.2 million in mines with 20–500 employees (331 mines × 2 shifts per day × 300 days per year × 0.25 hours per shift × $84.70 per hour); and $266,800 in mines with 501 + employees (12 mines × 3 shifts per day × 350 days per year × 0.25 hours per shift x $84.70 per hour).

Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting and Recording—Proposed § 75.363(b)

Proposed § 75.363 would require examiners to record violations of mandatory health or safety standards and the corrective actions taken for supplemental and on-shift examinations. The costs associated with this proposed requirement are included in cost estimates for proposed §§ 75.361 and 75.362 above.

Review of Citations and Orders—Proposed § 75.363(e)

Proposed § 75.363(e) is a new requirement that would require the operator to review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. Based upon Agency data and experience, MSHA estimates that 80 percent of underground coal mine operators currently discuss violations with examiners; therefore, approximately 20 percent (84 agents of the operators, 641 examiners for preshift and on-shift examinations, and 158 examiners for weekly and supplemental examinations) would need to review the citations and orders as follows: 16 agents, 49 preshift

and on-shift examiners, and 16 weekly and supplemental examiners in mines with 1–19 employees; 66 agents, 530 preshift and on-shift examiners, and 132 weekly and supplemental examiners in mines with 20–500 employees; and 2 agents, 62 preshift and on-shift examiners, and 10 weekly and supplemental examiners in mines with 501+ employees. MSHA also estimates that these reviews would take 1 hour in mines with 1–19 employees, 2 hours in mines with 20–500 employees, and 4 hours in mines with 501+ employees.

Examiners on preshift and on-shift exams are supervisors earning an hourly wage of $84.70 and examiners on weekly and supplemental exams are certified examiners earning an hourly wage of $35.30. MSHA estimates the operator's agent conducting the review earns an hourly wage of $84.70.

This would result in estimated costs of $557,000: $24,000 in mines with 1–19 employees [((16 agents + 49 examiners) × $84.70) × (4 meetings × 1 hour)] + [(16 examiners × $35.30) × (4 meetings × 1 hour)]; $441,000 in mines with 20–500 employees [((66 agents + 530 examiners) × $84.70) × (4 meetings × 2 hours)] + [(132 examiners × 35.30) × (4 meetings × 2 hours)]; and $92,000 in mines with 501+ employees [((2 agents + 62 examiners) × $84.70) × (4 meetings × 4 hours)] + [(10 examiners × $35.30) × (4 meetings × 4 hours)].

Weekly Examination—Proposed § 75.364

Under existing § 75.364, MSHA estimated that it would take an examiner at a typical small mine 5.1 hours to complete a weekly examination and an examiner at a typical large mine 10.2 hours to complete the weekly examination. Proposed § 75.364 would require operators to conduct examinations at least every seven days to identify violations of mandatory health or safety standards and record the corrective actions taken. These examinations mainly take place in worked-out areas of the mine where violations of mandatory health or safety standards are less likely to occur. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a non-supervisory wage of $35.30 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. MSHA also estimates that, on average, mines operate for 50 weeks out of the year.

This would result in estimated costs of $187,100: $35,700 in mines with 1–19 employees (81 mines × 50 weeks × 0.25 hours per week × $35.30 per hour); $146,100 in mines with 20–500 employees (331 mines × 50 weeks × 0.25 hours per week × $35.30 per hour); and $5,300 in mines with 501+ employees (12 mines × 50 weeks × 0.25 hours per week × $35.30 per hour).

Corrective Actions

MSHA's estimates do not include the costs of any corrective actions that would be necessary to come into compliance with the underlying regulatory requirements. These costs were included in MSHA's estimates associated with existing regulations and are not new compliance costs resulting from the proposed rule. Rather than waiting for violations to be either identified by a MSHA inspector or rise to the level of a hazardous condition and be identified by a mine examiner, the proposed rule would require mine operators to identify violations of mandatory health and safety standards during the mine examinations. This would prevent some accidents because mine operators would be required to take corrective actions earlier than under the existing standards, i.e., before a hazardous condition develops. Although the proposed rule would result in operators taking corrective actions sooner, it would not increase the costs of the corrective actions. Under MSHA's requirements, if cited, operators must correct a violation of a mandatory health or safety standard (such as removing coal dust accumulations from conveyor belts or maintaining equipment in safe operating condition) in order to abate the citation.

MSHA requests comments on the Agency's estimate of costs, as well as supporting data.

V. Feasibility

MSHA has concluded that the requirements of the proposed rule are technologically and economically feasible. The existing regulations require mine operators to perform the examinations to identify hazardous conditions. The proposed rule would expand the requirement to include identifying violations of mandatory health or safety standards.

A. Technological Feasibility

MSHA concludes that the proposed rule is technologically feasible because it would simply require operators to identify, record and correct violations of mandatory health or safety standards. There are no technology issues raised by the proposed rule.

B. Economic Feasibility

MSHA concludes that the proposed rule is economically feasible. The U.S. underground coal sector produced an estimated 332 million short tons of coal in 2009. Multiplying the production by the 2008 price of underground coal of $51.35 per short ton yields estimated 2009 underground coal revenues of approximately $17 billion. MSHA estimated the yearly compliance cost of the proposed rule to be $15.3 million, which is 0.09 percent of revenues ($15.3 million/$17 billion) for underground coal mines. MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the proposed rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this proposed rule on underground coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the

number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with the proposed rule and the impact of the proposed rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities that are covered by this proposed rule. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on "small entities" by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis is required.

For underground coal mines, the estimated preliminary 2009 production was approximately 5 million tons for mines that had fewer than 20 employees and 242 million tons for mines that had 500 or fewer employees. Using the 2008 price of underground coal of $51.35 per short ton and total 2009 coal production in short tons, underground coal revenues are estimated to be approximately $258.6 million for mines employing fewer than 20 employees and $12.4 billion for mines employing 500 or fewer employees. The annual cost of the proposed rule for mines that have fewer than 20 employees is 0.43 percent ($1.1 million/$258.6 million) of annual revenues, and the annual cost of the proposed rule for mines that have 500 or fewer employees is 0.12 percent ($14.4 million/$12.4 billion) of annual revenues. Using either MSHA's traditional definition of a small mine (one having fewer than 20 employees) or SBA's definition of a small mine (one having 500 or fewer employees), the yearly costs for underground coal mines to comply with the proposed rule will be less than 1 percent of their estimated revenues. Accordingly, MSHA has certified that the proposed rule will not have a significant impact on a substantial number of small entities that are covered by the proposed rule.

VII. Paperwork Reduction Act of 1995

A. Summary

This proposed rule contains changes that would affect the burden in an existing paperwork package with OMB Control Number 1219–0088. The proposed rule also contains a new burden for collection requirements which is shown in Table 5. The proposed rule would result in 13,257 burden hours and related costs of approximately $1 million annually.

TABLE 5—SUMMARY OF BURDEN HOURS AND COSTS

Requirement	Burden hours	Cost
75.360 PreShift exam	11,370	$963,039
75.363 Record of Hazards	827	61,649
75.364 Weekly exam	1,060	37,418
Totals	13,257	1,062.106

Proposed § 75.360—Burden to Make a Record of the Preshift Examination

Proposed § 75.360 would require operators to record any violations of mandatory health or safety standards found along with the corrective actions taken. MSHA estimates that it would take a certified examiner an average of 3 minutes (0.05 hrs.) out of the total time needed to perform the examination to record the violations along with any corrective actions taken. An examiner conducting a preshift exam earns a supervisory wage of $84.70 an hour (includes benefits). MSHA estimates that mines with 1–19 employees operate 200 days per year, mines with 20–500 employees operate 300 days per year, and mines with 501+ employees operate 350 days per year. MSHA also estimates there will be 1 exam per day at mines with 1–19 employees, 2 exams per day at mines with 20–500 employees, and 3 exams per day at mines with 501+ employees.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

Burden Hours

- 81 mines × 1 exam × 200 days × 0.05 hrs. = 810 hrs.
- 331 mines × 2 exams × 300 days × 0.05 hrs. = 9,930 hrs.
- 12 mines × 3 exams × 350 days × 0.05 hrs. = 630 hrs.

Total Hours = 11,370 hrs.

Burden Costs

- 11,370 hrs. × $84.70 per hour = $963,039.

Proposed § 75.363—Burden To Make a Record of Violations Found

Proposed § 75.363 would require operators to record any violations of mandatory health or safety standards found on supplemental and on-shift examinations and any corrective actions taken. The proposed preshift (§ 75.360) and weekly (§ 75.364) examinations have their own recordkeeping requirements. The proposed supplemental (§ 75.361) and on-shift (§ 75.362) standards would contain new recordkeeping requirements if a violation of a mandatory health or safety standard is found. The recordkeeping for these proposed standards would be recorded under proposed § 75.363.

During FY 2005 through 2009, MSHA inspectors found an annual average of 22,062 violations of the top 10 cited standards MSHA believes are most likely to be identified on preshift, supplemental, on-shift, and weekly examinations (*see* Section IV.B.). Because conditions resulting in these violations can occur and require corrective action multiple times during the year (*e.g.,* insufficient rock dust), MSHA multiplied the 22,062 violations found by MSHA inspectors by a factor of 1.5 to arrive at an estimated 33,093 violations that could be found by mine examiners. MSHA assumes that half of these violations, 16,547 violations, would be identified on the preshift and weekly examinations and the other half would be identified on supplemental and on-shift examinations.

Thus, MSHA estimates that the supplemental and on-shift examiners would find approximately 39 violations per year per mine (16,547 violations/424 mines). MSHA estimates that 80 percent

of these (31 violations) would be found on the on-shift examinations and 20 percent (8 violations) would be found on the supplemental examinations. MSHA estimates that it would take 3 minutes (0.05 hrs.) to record any violations identified and the corrective actions taken. Supervisors earning $84.70 an hour perform on-shift exams and certified examiners earning $35.30 perform weekly exams.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

Burden Hours

- 424 mines × 31 violations × 0.05 hrs. = 657 hrs.
- 424 mines × 8 violations × 0.05 hrs. = 170 hrs.

Total Hours = 827 hrs.

Burden Costs

- 657 hrs. × $84.70 wage rate = $55,648.
- 170 hrs. × $35.30 wage rate = $6,001.

Total burden cost = $61,649.

Proposed § 75.364—Burden To Make a Record of the Weekly Examinations

Proposed § 75.364 would require operators to conduct examinations every seven days to record violations of mandatory health or safety standards found and the corrective actions taken. MSHA estimates that it would take a certified examiner 3 minutes (0.05 hrs.) out of the total time needed to perform the examinations to record violations and any corrective actions taken. An examiner conducting these examinations earns a non-supervisory wage of $35.30 an hour (includes benefits). MSHA also estimates that, on average, mines operate for 50 weeks out of the year.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

Burden Hours

- 424 mines × 50 weeks × 0.05 hrs. = 1,060 hrs.

Burden Costs

- 1,060 hrs. × $35.30 wage rate = $37,418

B. Procedural Details

The information collection package for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended.

Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the **ADDRESSES** section of this preamble. The regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays the OMB control numbers for the information collection requirements in its regulations in 30 CFR part 3.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Executive Order 13132: Federalism

This proposed rule does not have "federalism implications" because it will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this proposed rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This proposed rule impacts only the underground coal mine industry. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this proposed rule will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have "tribal implications" because it will not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed this proposed rule for its energy effects because the proposed rule applies to the underground coal mining sector. Because this proposed rule will result in yearly costs of approximately $15.3 million to the underground coal mining industry, relative to annual revenues of $17 billion in 2009, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential

impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the proposed rule does not have a significant economic impact on a substantial number of small entities.

IX. References

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U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH 2010), "Best Practices for Dust Control in Coal Mining", DHHS (NIOSH) Publication No. 2010–110, Information Circular 9517, Jan 2010:1–76

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List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation.

Dated: December 21, 2010.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended, Chapter I of Title 30, part 75 of the Code of Federal Regulations is proposed to be amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811, 863.

Subpart D—Ventilation

2. Paragraphs (a)(2), (b) introductory text, (e), and (g) of § 75.360 are revised to read as follows:

§ 75.360 Preshift examination at fixed intervals.

(a) * * *

(2) Preshift examinations of areas where pumpers are scheduled to work or travel shall not be required prior to the pumper entering the areas if the pumper is a certified person and the pumper conducts an examination for hazardous conditions and violations of mandatory health or safety standards, tests for methane and oxygen deficiency, and determines if the air is moving in its proper direction in the area where the pumper works or travels. The examination of the area must be completed before the pumper performs any other work. A record of all hazardous conditions and violations of mandatory health or safety standards found by the pumper shall be made and retained in accordance with § 75.363 of this part.

(b) The person conducting the preshift examination shall examine for hazardous conditions and violations of mandatory health or safety standards, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at the following locations:

* * * * *

(e) The district manager may require the certified person to examine other areas of the mine or examine for other hazards and violations of mandatory health or safety standards during the preshift examination.

* * * * *

(g) *Recordkeeping.* A record of the results of each preshift examination, including a record of hazardous conditions and violations of mandatory health or safety standards and their locations found by the examiner during each examination and of the results and locations of air and methane measurements, shall be made on the surface before any persons, other than certified persons conducting examinations required by this subpart, enter any underground area of the mine. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the certified person who made the examination or by a person designated by the operator. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. A record shall also be made by a certified person of the action taken to correct hazardous conditions and violations of mandatory health or safety standards found during the preshift examination. All preshift and corrective action records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

* * * * *

3. Paragraph (a) of § 75.361 is revised to read as follows:

§ 75.361 Supplemental examination.

(a) Except for certified persons conducting examinations required by this subpart, within 3 hours before anyone enters an area in which a preshift examination has not been made for that shift, a certified person shall examine the area for hazardous conditions and violations of mandatory health or safety standards, determine whether the air is traveling in its proper direction and at its normal volume, and test for methane and oxygen deficiency.

* * * * *

4. Paragraphs (a)(1) and (b) of § 75.362 are revised to read as follows:

§ 75.362 On-shift examination.

(a)(1) At least once during each shift, or more often if necessary for safety, a certified person designated by the operator shall conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. The certified person shall check for hazardous conditions and violations of mandatory health or safety standards, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction.

* * * * *

(b) During each shift that coal is produced, a certified person shall examine for hazardous conditions and violations of mandatory health or safety standards along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, if the examination is conducted within 3 hours before the oncoming shift.

* * * * *

5. In § 75.363, new paragraph (e) is added, and the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 75.363 Hazardous conditions and violations of mandatory health or safety standards; posting, correcting, and recording.

(a) Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area. Any violation of a mandatory health or safety standard found during a preshift examination, a supplemental examination, an on-shift examination, or a weekly examination shall be corrected.

(b) A record shall be made of any hazardous condition and any violation of a mandatory health or safety standard found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition or violation of a mandatory health or safety standard is found and shall include the nature and location of the hazardous condition or violation of the mandatory health or safety standard and the corrective action taken. This record shall not be required for shifts when no hazardous conditions or violations of mandatory health or safety standards are found, or for hazardous conditions and violations of mandatory health or safety standards found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

* * * * *

(e) *Review of citations and orders.* The mine operator shall review with mine examiners on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required.

6. The introductory text of paragraph (b) and paragraphs (d) and (h) of § 75.364 are revised to read as follows:

§ 75.364 Weekly examination.

* * * * *

(b) *Hazardous conditions and violations of mandatory health or safety standards.* At least every 7 days, an examination for hazardous conditions and violations of mandatory health or safety standards at the following locations shall be made by a certified person designated by the operator:

* * * * *

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Any violation of a mandatory health or safety standard found during a weekly examination shall be corrected.

* * * * *

(h) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is conducted, a record of the results of each weekly examination, including a record of hazardous conditions and violations of mandatory health or safety standards found during each examination and their locations, the corrective action taken, and the results and location of air and methane measurements, shall be made. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the person making the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

* * * * *

[FR Doc. 2010–32410 Filed 12–22–10; 11:15 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1055]

RIN 1625–AA09

Drawbridge Operation Regulation; Rainey River, Rainer, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish drawbridge operating procedures for the Canadian National Railway Bridge across the Rainey River at Mile 85.0 at Rainer, Minnesota. This proposed rule is intended to establish standard bridge operating conditions for the drawbridge, including dates of operation.

DATES: Comments and related material must reach the Coast Guard on or before January 26, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1055 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil,* or fax 216–902–6088. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1055), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG–2010–1055" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1055" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The drawbridge has been remotely operated for numerous years, but does not have explicit approval by the Commander, Ninth Coast Guard District, to be operated from a remote location. The Coast Guard has recently been informed that the drawbridge is routinely unresponsive to signals from vessels for bridge openings. The unreliability of the bridge for vessel traffic may have a direct effect on the development of business and commerce in the cities of Rainer and International Falls, Minnesota. In addition, the presence of government and public vessels operating between Rainey River and Rainey Lake have magnified the need for the drawbridge to be responsive and reliable for all vessel traffic so the Coast Guard will not currently consider remote operation. Rainey River and Rainey Lake serve as the border between the United States of America and Canada. This bridge is a single leaf bascule type railroad bridge that provides a horizontal clearance of 125 feet. The water level on Rainey Lake and under the bridge is controlled by a hydro-electric dam facility at International Falls, Minnesota, thus charted datum is based on the water level surface of Rainey Lake when the gauge at Fort Frances, Canada reads 1107.0 feet resulting in a variable vertical clearance of 6 to 10 feet in the closed position. The railroad bridge carries significant train traffic across the international border. Rainer is a customs port-of-entry.

Discussion of Proposed Rule

Between May 1 and October 15 each year, the proposed regulation would require the bridge to be manned by a drawtender and open on signal, 24 hours a day, 7 days a week. Significant rail traffic may require the bridge to remain closed for periods, but shall be expected to be opened to vessel traffic within reasonable times, as needed, after rail traffic has passed. The bridge shall open on signal as soon as practicable for all Federal, State, local government vessels, commercial vessels, vessels seeking shelter from severe weather, and vessels in distress. The proposed regulation also establishes a permanent winter operating schedule by requiring vessels to provide at least 12 hours' advance notice for a bridge opening during winter, or during the traditional non-boating season, between October 16 and April 30 each year. Additionally, a clearance gauge would be required to indicate to vessels the water levels and clearance while the bridge is in the closed position.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is expected to improve intermodal transportation at the bridge crossing and does not exclude either vessel or train traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed regulation is expected to increase availability of the drawbridge for vessel traffic and potentially increase access by, and to, small entities on the waterway.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Lee D. Soule, Bridge Management Specialist, U. S. Coast Guard; telephone 216–902–6085, e-mail *lee.d.soule@uscg.mil,* or fax 216–902–6088. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Add § 117.664 to read as follows:

§ 117.664 Rainey River, Rainey Lake and their tributaries.

The draw of the Canadian National Bridge, mile 85.0, at Rainer, shall open on signal; except that, from October 16 to April 30, the draw shall open on signal if at least 12-hours advance notice is provided. The commercial phone

number to provide advance notice shall be posted on the bridge so that it is plainly visible to vessel operators approaching the up or downstream side of the bridge. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures to indicate the vertical clearance under the closed draw at all water levels. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: November 23, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2010–32381 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0945, FRL–9243–9]

Approval and Promulgation of Implementation Plans; Nebraska: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nebraska State Implementation Plan (SIP), which were recently submitted by the Nebraska Department of Environmental Quality (NDEQ). These revisions include proposed changes to Nebraska's Prevention of Significant Deterioration (PSD) program, submitted by NDEQ to EPA on November 19, 2010; and proposed changes to Nebraska's greenhouse gas (GHG) construction permit related regulations, submitted by NDEQ to EPA on October 19, 2010 (that NDEQ requested parallel processing for on September 30, 2010). The proposed SIP revision (Chapters 1, 2, 5, 14, 15, 17 and 19 of Title 129 of the Nebraska Administrative Code) to Nebraska's Prevention of Significant Deterioration (PSD) program includes Nebraska's adoption of portions of EPA's 2002 new source review (NSR) rule, which we call the NSR Reform Rule, and which we issued by notice dated December 31, 2002, 67 FR 80186. The proposed SIP revision also provides the state of Nebraska with authority to regulate GHG emissions under the PSD program and incorporates the GHG emission thresholds established in EPA's "PSD and Title V Greenhouse Gas Tailoring Final Rule," which EPA issued by notice dated June 3, 2010, 75 FR 31514. EPA is proposing approval of both submittals and is proposing approval of the GHG portion of the proposed SIP revision through a parallel processing action. In the alternative, EPA is soliciting comments from the public on whether it should initially only approve Nebraska's October 19, 2010 submittal with respect to the revisions to the GHG construction permit regulations, and address Nebraska's November 19, 2010 submittal related to NSR Reform in a subsequent final action.

DATES: Comments must be received on or before January 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0945, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: gonzalez.larry@epa.gov.*
3. *Fax:* (913) 551–7844.
4. *Mail:* Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier:* Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0945. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Nebraska SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551–7041; e-mail address: *gonzalez.larry@epa.gov.*

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I. What action is EPA proposing in today's notice?

On October 19, 2010, NDEQ submitted draft revisions to the Nebraska Administrative Code to EPA for approval into the state of Nebraska's SIP to (1) provide the state with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Nebraska's PSD permitting requirements for GHG emissions. These draft revisions submitted on October 19, 2010 revise existing regulations that NDEQ had amended to adopt portions of EPA's 2002 NSR Reform rules. Because NDEQ had not previously submitted these amendments, on November 19, 2010, NDEQ submitted revisions to the Nebraska Administrative Code to EPA for approval into the state of Nebraska's SIP that adopt portions of the 2002 NSR Reform rules. The combination of the October 19, 2010 submittal and the November 19, 2010 submittal will be referred to as the submissions.

With respect to Nebraska's GHG revisions, the thresholds and time-frames are consistent with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514) hereafter referred to as the "Tailoring Rule." Final approval of Nebraska's submissions into the SIP would make Nebraska's SIP adequate with respect to PSD requirements for GHG-emitting sources. Furthermore, final approval of Nebraska's submissions into the SIP would put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when PSD requirements begin applying to GHGs on January 2, 2011. Finally, final approval of Nebraska's submissions into the SIP would update the SIP to reflect Nebraska's adoption of portions of EPA's 2002 NSR Reform rules. Pursuant to section 110(k)(3) and 110(l) of the CAA, EPA is proposing to approve this revision into the Nebraska SIP.[1]

Due to the fact that the proposed rule revision relating to GHGs is not yet state-effective, on September 30, 2010, Nebraska requested that EPA "parallel process" this portion of the revisions. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Nebraska submits the formal state-effective rule and SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the Nebraska SIP relates to four distinct Federal rulemaking actions. The first rulemaking is EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514 (June 3, 2010). The second rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," Final Rule (GHG SIP Call), which was signed by the EPA Administrator on December 1, 2010 (see *http://www.epa.gov/nsr/documents/20101201finalrule.pdf*). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG proposed FIP), which serves as a companion rulemaking to EPA's GHG SIP Call, and which EPA has stated it intends to finalize for certain states as soon as December 23, 2010. The fourth rulemaking is EPA's "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects," Final Rule, 67 FR 80186 (December 31, 2002) (NSR Reform), which revised the applicability of the PSD requirements. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call, EPA issued a finding that the EPA-approved PSD programs in 13 states (including Nebraska) are substantially inadequate to comply with CAA requirements because they do not apply PSD requirements to GHG-emitting sources. For each of these states, EPA required the state (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA imposed an expedited schedule for these states, in most cases, to submit their corrective SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and, without an approved SIP or Federal Implementation Plan (FIP) in place in the state—which would authorize the State or EPA to act as the permitting authority—may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the proposed GHG FIP, EPA is proposing a FIP to apply in any state that is unable to submit, by its deadline, a corrective SIP revision. In the fourth rulemaking, NSR Reform, EPA promulgated certain revisions to the

[1] In today's proposal, EPA is also soliciting public comment on whether it should initially only approve the revisions related to GHGs into the Nebraska SIP in this rulemaking, and address the revisions related to NSR Reform in a subsequent final action. Under this alternative, Nebraska SIP-approved rules that are applicable to the State's authority to regulate GHG would stem from the provisions of EPA's Federal PSD rules as of July 1, 1997, in conjunction with Nebraska's revised regulations which change the definition of "NSR regulated pollutant" to provide NDEQ with the authority to regulate GHGs.

PSD program to, among other things, provide administrative flexibility while retaining or enhancing environmental benefits of the permitting program.

Nebraska has submitted a proposed SIP revision to make the SIP adequate with respect to federal PSD requirements for GHG-emitting sources. This SIP revision puts in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to applicable GHG permitting requirements as of January 2, 2011. The proposed SIP revision also makes other changes to the PSD program consistent with NSR Reform.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Nebraska SIP revision and EPA's other national rulemakings as well as EPA's analysis of Nebraska's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHGs," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHGs range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHGs on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution to global warming based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are generally contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability for a proposed new or modified source is whether the source is a "major emitting facility," based on its estimated potential emissions of regulated pollutants within the meaning of CAA section 169(1), that either constructs or undertakes a modification. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Source

Under EPA's regulations, PSD applies to a "major stationary source," which is defined as any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant or any other source type that emits or has the potential to emit any air pollutant in amounts equal to or greater than 250 tpy. 40 CFR 51.166(a)(7)(i), 51.166(b)(1)(i). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from

section 165(a)(1) of the CAA, which applies PSD to any "major emitting facility"; and CAA section 169(l), which defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. EPA's regulations have revised the terminology, by applying PSD to any "major stationary source," and have interpreted PSD applicability more narrowly by defining that term to include a source that emits at least one "regulated NSR pollutant," 40 CFR 51.166(b)(1)(i)(a). The regulations define that term, in turn, to include pollutants regulated under specified provisions of the CAA; and to, as a catch-all category, "[a]ny pollutant that otherwise is subject to regulation under the [CAA]." *Id.* at 51.166(b)(49)(iv). This catch-all category will include GHGs on January 2, 2011, under our interpretation of the term "subject to regulation under the [CAA]," as discussed in EPA's recently issued memorandum entitled, "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

b. Major Modifications

Under EPA regulations, PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source"; (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 51.166(b)(23)(i)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level 40 CFR 51.166(b)(23)(i)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a *de minimis* contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[2]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers PSD for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually PSD permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(*C*) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions—which, as noted above, apply, by their terms, to "any air pollutant," and which EPA has, through regulation, interpreted more narrowly as any "NSR regulated pollutant"—and read in conjunction with other provisions, such as the BACT provision under CAA section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation, including, as discussed below, GHGs on and after January 2, 2011.[3]

[2] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

[3] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG; and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR31560–62 (June 3, 2010). EPA maintains its position that the

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state acting as EPA's delegatee serves as the permitting authority. On the other hand, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Nebraska has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA and the National Highway Traffic Safety Administration published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR 25686 (40 CFR 86.1818–12(a)).

Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published an interpretation that we call the Johnson Memo Reconsideration. "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs", 75 FR 17004. In this action, EPA stated that it would continue to apply its interpretation that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. EPA added that a pollutant becomes subject to regulation at the time the first regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle (the first model year in which the rule's GHG requirements apply) may be introduced into commerce.

2. What is EPA's tailoring rule?

By notice dated June 3, 2010, EPA published what we call the Tailoring Rule, which was a final rulemaking for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program [4] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later.[5]

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources that newly construct or modify to apply PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant and thereby trigger PSD anyway.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, existing sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHGs, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

PSD provisions apply to all pollutants subject to regulations, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

[4] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Nebraska's title V program. We plan to take action on Nebraska's title V program in the future.

[5] EPA adopted the Tailoring Rule after careful consideration of numerous public comments. On October 27, 2009 (74 FR 55292), EPA proposed the Tailoring Rule. EPA held two public hearings on the proposed rule, and received over 400,000 written public comments. The public comment period ended on December 28, 2009. The comments provided detailed information that helped EPA understand better the issues and potential impacts of the Tailoring Rule. The preamble of EPA's Tailoring Rule describes in detail the comments received and how some of these comments were incorporated in EPA's fine rule. *See* 75 FR 31514 for more detail.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (*i.e.,* April 30, 2016). This is because EPA has concluded that at the present time the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[6] On September 30, 2010, the state of Nebraska provided a letter to EPA with the requested modification. See the docket for this proposed rulemaking for a copy of Nebraska's letter.

The thresholds that EPA established are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[7] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[8] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

3. What is the GHG SIP Call and the proposed GHG FIP?

On December 1, 2010, the EPA Administrator signed the final GHG SIP Call. In that action—along with the companion GHG FIP, which EPA proposed by notice dated September 2, 2010 and expects to finalize for some states on December 23, 2010—EPA took steps to ensure that in the 13 states that do not have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011 or soon thereafter. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, these 13 states have EPA-approved PSD programs that do not include GHG-emitting sources and therefore do not authorize these states to issue PSD permits to such sources. Therefore, EPA issued a finding that these 13 states' SIPs are substantially inadequate to comply with CAA requirements. Accordingly, and as part of the same action, EPA also issued a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. EPA also established a SIP submittal deadline. In the proposed SIP call, EPA had stated that the deadline could range from as little as three weeks after the final SIP call was signed to as long as 12 months after the final SIP call was signed, and that each affected state was authorized to indicate to EPA that it did not object to a deadline on the earlier end of that range. In the final SIP call, EPA established deadlines that ranged, for the various states, from December 23, 2010 (three weeks after signature) to December 1, 2011 (12 months after signature), based, in general, on each state's preference. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state that is unable to submit a corrective SIP revision by its deadline.

Nebraska was one of the states for which EPA proposed and finalized the SIP Call. The state's comments regarding the proposed SIP call, submitted September 30, 2010, are included in the docket for this rulemaking. In the SIP call, EPA established a SIP submittal deadline for Nebraska of March 1, 2011, in accordance with Nebraska's statement

[6] Narrowing EPA's approval will ensure that for federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those states for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[7] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[8] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

in that letter that "Nebraska does not object to EPA's establishment of a deadline of March 1, 2011 for submittal of Nebraska's corrective SIP, although we are expeditiously working for an earlier submittal."

In addition, in the SIP call rulemaking, EPA stated certain requirements that the corrective SIP revision must meet, which are that the corrective SIP revision must—

(i) apply the SIP PSD program to GHG-emitting sources;

(ii) define GHGs as the same pollutant to which the Light-Duty Vehicle Rule [9] (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)); and

(iii) either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and show that the state has adequate personnel and funding to administer and implement those lower thresholds.

GHG SIP Call, at 12–13. In addition, if the corrective SIP revision adopts the Tailoring Rule thresholds, then it must either adopt the CO_2e metric and use short tons (as opposed to metric tons) for calculating GHG emissions in order to implement those thresholds, or assure that its approach is at least as stringent as under the Tailoring Rule, so that the state does not exclude more sources than under the Tailoring Rule. See *id.* at 96.

E. What is the background for EPA's New Source Review (NSR) Reform rule?

The 2002 NSR Reform rules made changes to five areas of the NSR programs (concerning both PSD and nonattainment NSR). In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of physical change or change in the method of operation.

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA's 1980 NSR rules (45 FR 5276 August 7, 1980). On June 24, 2005, the Court of Appeals for the District of Columbia issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from recordkeeping, *e.g.,* 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules.

III. What is EPA's analysis of Nebraska's proposed SIP revision?

A. What does Nebraska's proposed SIP revision do?

In the submissions, Nebraska proposed a SIP revision to its GHG construction permit related regulations and submitted its proposal to EPA for parallel processing and eventual approval as the corrective SIP revision in anticipation of EPA's SIP call. If and when EPA approves this SIP revision, Nebraska will have authority to issue PSD permits to GHG-emitting sources, and thereby assure that those sources will be able to construct or undertake modifications after January 1, 2011. In addition, this SIP revision establishes the Tailoring Rule thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program. Without these Tailoring Rule thresholds, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, would impose undue costs on small sources, and would overwhelm Nebraska's permitting resources and severely impair the function of the program.

Specifically, Nebraska's proposed SIP revision includes changes to Chapter 1 of Title 129 of the Nebraska Administrative Code—*Definitions.* These revisions update Nebraska's air regulations by providing the state the authority to regulate GHGs and aligning the thresholds for GHG permitting applicability with those specified in the Tailoring Rule. The proposed SIP revisions also include a change to Chapter 5 of Title 129 of the Nebraska Administrative Code—*Operating Permits—When Required.* This revision allows sources to limit their potential to emit in order to become a synthetic minor source.

The proposed SIP revision also adopts those portions of the NSR Reform rules which were not vacated or remanded by the Court, and includes changes to Chapter 2 of Title 129 of the Nebraska Administrative Code—*Definition of Major Source,* Chapter 14 of Title 129 of the Nebraska Administrative Code—*Permits: Public Participation,* Chapter 15 of Title 129 of the Nebraska Administrative Code—*Permit Revisions; Reopening for Cause,* Chapter 17 of Title 129 of the Nebraska Administrative Code—*Construction Permits—When Required,* and Chapter 19 of Title 129 of the Nebraska Administrative Code—*Prevention of Significant Deterioration of Air Quality.* These changes adopt portions of the 2002 NSR Reform rules. These revisions have already been adopted and are effective at the state level. Thus, unlike the Tailoring Rule revisions where the state is in the process of adopting the proposed revisions, these rules are not subject to parallel processing. Nebraska's proposed SIP revision includes the 2002 NSR Reform provisions for determining baseline actual emissions, adopting actual-to-projected actual methodology for determining whether a major modification has occurred, and allowing plantwide applicability limits (PALs). Nebraska's proposed SIP revision does not include the 2002 NSR Reform provisions relating to clean units, pollution control projects (PCPs), and reasonable possibility recordkeeping provisions. In addition, Nebraska's submittal does not include a change to the named source category list in Chapter 2, which changed the designation of "chemical processing plants" to exclude certain ethanol production facilities. Therefore, this proposed action does not propose to approve into the SIP EPA's "ethanol rule" revision promulgated in May 2007.

EPA is proposing in today's action to simultaneously approve Nebraska's proposed SIP revisions relating to GHGs and NSR Reform. In the alternative, EPA is also soliciting public comment on whether it should initially only approve the SIP revisions related to GHGs in this rulemaking, and address the proposed SIP revisions related to the NSR Reform provisions in a subsequent final action. Under this alternative, Nebraska's SIP-approved rules that are applicable to the State's authority to regulate GHG would stem from the provisions of EPA's Federal PSD rules as of July 1, 1997, in conjunction with Nebraska's revised regulations which change the definition

[9] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

of "NSR regulated pollutant" to provide NDEQ with the authority to regulate GHGs.

B. Why is approval of Nebraska's proposed SIP revision consistent with the Clean Air Act?

With respect to the GHG part of the SIP submission, Nebraska has received a SIP call because its PSD program does not apply to GHGs, and as a result, Nebraska is required to submit, by March 1, 2010, a SIP revision that applies PSD to GHGs and does so either at the Tailoring Rule thresholds or at lower thresholds and, if the latter, then Nebraska is required to demonstrate that it has adequate resources for implementation. In its letter dated September 30, 2010, referenced above, Nebraska notified EPA that the state is in the process of revising its regulation (the subject of this proposed action) to provide this authority. It will do so by updating the definitions of "major source" and "regulated NSR pollutant" to explicitly include GHG as a regulated NSR pollutant. In addition, the Nebraska rules incorporate the same thresholds and phase-in schedule as the Tailoring Rule and they adopt the CO_2e metric and use of short tons for determining the thresholds.

EPA has preliminarily determined that this change to Nebraska's regulation meets the requirements of the SIP call. Thus, this change is consistent with the CAA and its implementing regulations regarding GHG. The changes included in this submittal are substantively the same as EPA's Tailoring Rule, and therefore comply with the requirements of the SIP call. The Nebraska rules have been formatted to conform to Nebraska's rule drafting standards, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules.

With respect to the NSR Reform part of the proposed SIP revision, Nebraska's proposed SIP revision tracks the Federal NSR Reform Rules, and EPA previously determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial. (*See* 68 FR 44620 and 63021). Section 110(k) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all the applicable requirements of the CAA. EPA's Supplemental Analysis for the Federal NSR Reform Rules estimated that there are likely to be reductions in emissions of volatile organic compounds (VOC) due to the use of PALs. It is more difficult to assess the environmental impacts of the actual-to-projected-actual test and the "2 in 10" baseline provisions. The Supplemental Analysis determined that there is a slight national environmental benefit brought about by these NSR Reform provisions. Overall, we expect changes in air quality as a result of implementing PALs, the actual-to-projected-actual test, and the "2 in 10" baseline provisions in Nebraska to be somewhere between neutral and providing modest benefits toward air quality improvements. Accordingly, EPA believes that these changes are consistent with the requirements of section 110(l).

In addition, the Nebraska NSR Reform rules are, in substantive content, the same as EPA's December 2002 NSR Reform rule, as it relates to PALs, the "actual to projected actual" test, and the calculation of baseline actual emissions. As stated previously, Nebraska has not adopted the other provisions of the federal rule vacated or remanded by the Court in the *New York* case.[10]

IV. Proposed Action

Pursuant to sections 110(k)(3) and 110(l) of the CAA, EPA is proposing to approve the state of Nebraska's proposed revisions to the Nebraska Administrative Code that were submitted to EPA relating to PSD requirements for GHG-emitting sources. Specifically, Nebraska's submissions meet the requirements of the GHG SIP Call because they (1) provide the state of Nebraska with the authority to regulate GHGs under its PSD program, and (2) establish appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA is also proposing to approve prior revisions to Nebraska's PSD rule, identified above, which incorporate portions of EPA's 2002 NSR Reform rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs, and with the EPA regulations implementing NSR Reform.

As noted above, at Nebraska's request, EPA is "parallel processing" this proposed rule revision as it relates to GHGs. After Nebraska submits the formal state-effective rule revisions (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if these changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

V. Statutory and Executive Order Reviews

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

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

[10] As stated above, EPA is proposing in today's action to simultaneously approve Nebraska's proposed SIP revisions relating to GHGs and NSR Reform. In the alternative, EPA is also soliciting public comment on whether it should initially only approve the SIP revisions related to GHGs in this rulemaking, and address the proposed SIP revisions related to the NSR Reform provisions in a subsequent final action.

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: December 15, 2010.

William W. Rice,

Acting Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2010–0933, FRL–9244–1]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. South Dakota has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Comments must be received by *January 26, 2011.*

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: cosentini.christina@epa.gov.*
- *Fax:* (303) 312–6341 (prior to faxing, please notify the EPA contact listed below).
- *Mail, Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.: EPA–R08–RCRA–2010–0933. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal Web site *http://www.regulations.gov* is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be 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 through *http://www.regulations.gov* or in hard copy at: EPA Region 8, from 8 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312–6231, or the South Dakota Department of Environment and Natural Resources, from 9 a.m. to 5 p.m., Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501, contact: Carrie Jacobson, phone number (605) 773–3153. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6231, *cosentini.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that the State of South Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) for all areas within the State except for lands located within formal Indian Reservations within or abutting the State of South Dakota, including the Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian

Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the U.S. for an Indian tribe, and any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151. New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota including issuing permits, until South Dakota is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in South Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. The State of South Dakota has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections, and require monitoring, tests, analyses, or reports; and
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether South Dakota has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which South Dakota is being authorized by this action are already effective under State law, and are not changed by this action.

D. What happens if EPA receives comments opposing this action?

If EPA receives comments opposing this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment on this action, you must do so at this time.

E. For what has South Dakota previously been authorized?

South Dakota initially received final authorization on October 19, 1984, effective November 2, 1984 (49 FR41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (58 FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); July 24, 1996, effective September 23, 1996 (61 FR 38392); May 9, 2000, effective June 8, 2000 (65 FR 26755); April 23, 2004, effective May 24, 2004 (69 FR 21962); and March 8, 2006, effective March 8, 2006 (71 FR 11533).

F. What changes are we approving with today's action?

South Dakota submitted a complete program revision application on April 1, 2010, seeking authorization of their changes in accordance with 40 CFR 271.21. Subject to receipt of written comments that oppose this action, we now propose that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant South Dakota final authorization for its entire Hazardous Waste Program. South Dakota has revised its entire program using a method that incorporates the federal Program by reference. This method clearly indicates where the State's requirements are more stringent or broader-in-scope than the federal requirements. The State also excluded federal provisions, from the incorporation by reference, that are not delegated to the State's program.

The State of South Dakota revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated from July 1, 2004 through July 1, 2007, (RCRA Clusters XIV–XVII). South Dakota requirements are included in a chart with this document.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
1. Recycled Used Oil Management Standards; Clarification. (Checklist 203).	68 FR 44659–44665 July 30, 2003	South Dakota Codified Laws (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:22:01, 74:28:27:01, 2007 Rule Update, effective September 13, 2007.
2. NESHAP: Surface Coating of Automobiles and Light-Duty Trucks. (Checklist 205).	69 FR 22601–22661 April 26, 2004	South Dakota Codified Laws (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:25:01, 74:28:28:01, 2007 Rule Update, effective September 13, 2007.
3. Nonwastewaters from Dyes and Pigments. (Checklist 206).	70 FR 9138–9180 February 24, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:22:01, 74:28:30:01, 2007 Rule Update, effective September 13, 2007.
4. Uniform Hazardous Waste Manifest Rule. (Checklist 207).	70 FR 10776–10825 March 4, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:28:01, 2007 Rule Update, effective September 13, 2007.
5. Methods Innovation Rule and SW–846 Final Update IIIB. (Checklist 208).	70 FR 34538–34592 June 14, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:27:01, 74:28:28:01, 74:28:30:01, 2007 Rule Update, effective September 13, 2007.
6. Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. (Checklist 209).	70 FR 45508–45522 August 5, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:28:01, 74:28:26:01, 74:28:30:01, 74:28:33:01, 2007 Rule Update, effective September 13, 2007.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
7. Standardized Permits for RCRA Hazardous Waste Management Facilities. (Checklist 210).	70 FR 53420–53478 September 8, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:26:01, 2008 Rule Update, effective October 27, 2008.
8. Revisions of Wastewater Treatment Exemptions for Hazardous Waste Mixtures. ("Headworks exemptions" Checklist 211).	70 FR 57769–57785 October 4, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:22:01, 2007 Rule Update, effective September 13, 2007.
9. NESHAP: Final Standards for Hazardous Waste Combustors. (Phase I Final Replacement Standards and Phase II (Checklist 212).	70 FR 59402–59579 October 12, 2005	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:25:01, 74:28:26:01, 74:28:27:01, 74:28:28:01, 2007 Rule Update, effective September 13, 2007.
10. Burden Reduction Initiative. (Checklist 213)	71 FR 16862–16915 April 4, 2006	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:27:01, 74:28:28:01, 74:28:33:01 2007 Rule Update, effective September 13, 2007.
11. Corrections to Errors in the Code of Federal Regulations. (Checklist 214).	71 FR 40254–40280 July 14, 2006	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 74:28:23:01, 4:28:25:01, 74:28:26:01, 74:28:27:01, 74:28:28:01, 74:28:30:01, 74:28:33:01, 2008 Rule Update, effective October 27, 2008.
12. Cathode Ray Tubes Rule. (Checklist 215)	71 FR 42928–42949 July 28, 2006	South Dakota Code Annotated (SDCL) 34A–11; Administrative Rules of South Dakota (ARSD), 74:28:21:02, 74:28:22:01, 2007 Rule Update effective September 13, 2007.

G. Where are the revised state rules different from the federal rules?

The South Dakota hazardous waste program is equivalent to the Federal program in all areas. EPA cannot delegate the Federal requirements at 40 CFR part 262, subpart E and H, sections 268.5, 268.6, 268.42(b), and 268.44(a) through (g). EPA will continue to implement these requirements.

H. Who handles permits after the authorization takes effect?

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

I. How does today's action affect Indian country (18 U.S.C. 1151) in South Dakota?

South Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of South Dakota:
   a. Cheyenne River Indian Reservation.
   b. Crow Creek Indian Reservation.
   c. Flandreau Indian Reservation.
   d. Lower Brule Indian Reservation.
   e. Pine Ridge Indian Reservation.
   f. Rosebud Indian Reservation.
   g. Standing Rock Indian Reservation.
   h. Yankton Indian Reservation.
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

J. What is codification and is EPA codifying South Dakota's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart QQ for this authorization of South Dakota's program changes until a later date. In this authorization application EPA is not codifying the rules documented in this **Federal Register** notice.

K. Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 6, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–32480 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2365; MB Docket No. 02–151; RM–10453]

Television Broadcasting Services; Yuma, AZ

AGENCY: Federal Communications Commission.

ACTION: Dismissal.

SUMMARY: The Commission dismisses the petition for rulemaking filed by Arizona Western College, requesting that the Commission amend the pre-transition DTV Table Allotments to allot digital channel 24 at Yuma, Arizona. The pre-transition DTV Table of Allotments is now obsolete as the DTV transition is over and the Post-Transition Table of DTV Allotments has replaced the pre-transition DTV Table of Allotments. Therefore, the petition for rulemaking filed by Arizona Western College is dismissed.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* MB Docket No. 02–151, adopted December 15, 2010, and released December 16, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2010–32481 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2358; MB Docket No. 01–323; RM–10337]

Television Broadcasting Services; Vernal and Santaquin, UT, and Ely and Caliente, NV

AGENCY: Federal Communications Commission.

ACTION: Dismissal.

SUMMARY: The Commission dismisses the pending rulemaking petition filed by TV 6, L.L.C., former permittee of KBCJ, analog channel 6, Vernal, Utah, and Kaleidescope Foundation Inc., former permitee of KBNY, analog channel 6, Ely, Nevada, requesting to reallot their analog channels from Vernal to Santaquin, Utah and from Ely to Caliente, Nevada. The Commission was required by the DTV Delay Act to

terminate all licenses for full-power television stations and broadcasting by full power stations in the analog service by June 13, 2009. Therefore, the Commission no longer has the authority to act on rulemaking proposals in the full-power analog television service.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* MB Docket No. 01–323, adopted December 14, 2010, and released December 15, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010–32492 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No. OST–2010–0297]

RIN 2105–AD99

Public Availability of Information; Freedom of Information Act

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT) is proposing to revise and republish its regulations implementing the Freedom of Information Act (FOIA). The purposes for the revision are to update the regulations to be consistent with amendments to FOIA that were signed into law on December 31, 2007 and October 28, 2009, to revise DOT's fee schedule and other charges, and to make provisions clearer and easier to locate. The regulations are being republished in their entirety because of numerous changes to the organization and headings.

DATE: Comments are due February 25, 2011.

ADDRESSES: You may submit comments, identified by the docket number 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, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826 for assistance.

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.

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 the complete User Notice and Privacy Notice for Regulations.gov at: *http://www.regulations.gov/search/Regs/home.html#privacyNotice.*

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: Beth Kramer, Departmental FOIA Attorney, Office of the General Counsel, Department of Transportation, Washington, DC, at *beth.kramer@dot.gov* or (202) 366–0365, or Robert I. Ross, Senior Attorney, Office of the General Counsel, Department of Transportation, Washington, DC, at *bob.ross@dot.gov* or (202) 366–9156.

SUPPLEMENTARY INFORMATION: These regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, were last revised on August 17, 1998, to reflect changes required by the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231); on August 26, 2002, to make technical corrections to reflect the creation of the Transportation Security Administration; and on June 12, 2008, to make technical corrections to names of DOT components and locations and phone numbers for DOT's FOIA Offices and Primary Electronic Access Facility. On December 31, 2007, the OPEN Government Act of 2007 (Pub. L. 110–175) was signed into law, amending FOIA. On October 28, 2009, FOIA was amended by the OPEN FOIA Act of 2009 (Pub. L. 111–83).

This revision proposes to update the regulations to make them consistent with the OPEN Government Act of 2007 and OPEN FOIA Act of 2009, to revise DOT's fee schedule and other charges, and to make provisions clearer and easier to locate. New provisions implementing the OPEN Government Act of 2007 have been included in the following sections addressing the following subjects: § 7.2 (definitions of "record" and "representative of the news media"); § 7.22(a) and (c) (Chief FOIA Officer and FOIA Public Liaisons); § 7.24(d) and (e) (receipt of requests); § 7.35 (tolling of time limits); and § 7.43(f) (ability to charge fees when a

time limit is missed). One provision has been changed in § 7.23(c)(3) to implement the OPEN FOIA Act of 2009, affecting FOIA Exemption 3. Revisions to DOT's fee schedule and other charges can be found at § 7.41(e) (increasing fees for certified copies from $4 to $10 with seal and from $2 to $5 without seal); § 7.42(a) (splitting one employee rate category into two, so that there are now four employee rate categories instead of three); and § 7.43(a)(1) (increasing the threshold for *de minimis* requests for which fees are not charged from $10 to $20). No change has been made to the $.10 per page fee for photocopies not larger than 8.5 x 14 inches (*see* §§ 7.13(b)(1) and 7.42(d)(1)). Other provisions have been clarified or reorganized; for example, clarifying provisions have been added to §§ 7.22(d) (delegations of authority) and 7.26(a) (addressing the search cut-off date), and appeal provisions that were formerly in a separate subpart are now in the subpart entitled "Time Limits."

Regulatory Analyses and Notices: This proposal is not a "significant regulatory action" within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. This proposal has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for Federalism to warrant preparation of a Federalism Assessment.

Collection of Information. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal Governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal Government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal Governments or the private sector.

List of Subjects in 49 CFR Part 7

Public availability of information.

In consideration of the foregoing, DOT proposes to revise Part 7 of Title 49, Code of Federal Regulations, to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.
7.1 General.
7.2 Definitions.

Subpart B—Information Required To Be Made Public by DOT

7.11 What records are published in the **Federal Register,** and how are they accessed?
7.12 What records are available in reading rooms, and how are they accessed?
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Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; E.O. 13392.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements 5 U.S.C. 552, as amended, and prescribes rules governing the public availability of Department of Transportation (DOT) records.

(b) Subpart B of this part contains the DOT regulations concerning the public availability of:

(1) Records that DOT is required to publish in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) (described in § 7.11(a)), and indices to such records; and

(2) Records that DOT is required to make available to the public in a reading room without need for a specific request, pursuant to 5 U.S.C. 552(a)(2) (described in § 7.12(a)), and indices to such records.

(c) Subpart C of this part contains the DOT regulations concerning records that may be requested from DOT under the Freedom of Information Act (FOIA), namely, records that DOT is not required to publish in the **Federal Register** or make publicly available in a reading room under 5 U.S.C. 552(a)(2)(A), (B), (C) and (E) and frequently requested records even if DOT has made them publicly available as required under 5 U.S.C. 552(a)(2)(D). Because DOT and its components have made many of these records available on their Web pages (*http://www.dot.gov* or *http://www.dot.gov/foia*), requesters may find it preferable to obtain such records directly from the Web pages in lieu of submitting a FOIA request, if the Web pages contain records that meet their needs.

(d) Subpart D of this part contains the DOT regulations concerning time limits applicable to processing requests for records under subpart C.

(e) Subpart E of this part contains the DOT regulations concerning processing fees applicable to records made available under subpart B or requested under subpart C.

§ 7.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

Administrator means the head of each component of DOT and includes the Inspector General.

Confidential commercial information means trade secrets and confidential, privileged, and/or proprietary business or financial information submitted to DOT by any person.

Components– see the definition of *Department* in this section.

Concurrence means that the approval of the individual being consulted is required in order for the subject action to be taken.

Consultation has its ordinary meaning: the approval of the individual being consulted is not required in order for the subject action to be taken.

Department (1) Means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the DOT Operating Administrations, all of which may be referred to as DOT components:

(i) Federal Aviation Administration,

(ii) Federal Highway Administration,

(iii) Federal Motor Carrier Safety Administration,

(iv) Federal Railroad Administration,

(v) Federal Transit Administration,

(vi) Maritime Administration,

(vii) National Highway Traffic Safety Administration,

(viii) Office of Inspector General,

(ix) Office of the Secretary of Transportation,

(x) Pipeline and Hazardous Materials Safety Administration,

(xi) Research and Innovative Technology Administration, and

(xii) Saint Lawrence Seaway Development Corporation.

(2) Each of these DOT components can be contacted through its FOIA Requester Service Center(s) as provided in § 7.27. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations at 49 CFR Part 1001.

First-party request means a request by an individual for records pertaining to that individual.

Hourly rate means the actual hourly base pay for a civilian employee.

Reading room records are those records required to be made available to the public without a specific request under 5 U.S.C. 552(a)(2), as described in § 7.12 of subpart B of this part. DOT and its components make their reading room records available to the public electronically through their FOIA Web pages (*http://www.dot.gov/foia*) and at the physical locations identified in § 7.12(b). Other records may also be made available at DOT's discretion through DOT Web pages (*http://www.dot.gov*).

Record includes any writing, drawing, map, recording, diskette, DVD, CD–ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved. The term also includes any such documentary material stored electronically by computer.

Redact means delete or mark over.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. "News" means information that is about current events or that would be of current interest to the public.

Responsible DOT official means the head of the DOT component concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them, authorized to take an action under this part.

Secretary means the Secretary of Transportation or any individual to whom the Secretary has delegated authority in the matter concerned.

Toll means temporarily stop the running of a time limit.

Subpart B—Information Required To Be Made Public by DOT

§ 7.11 What records are published in the Federal Register, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(1), DOT publishes the following records in the Federal Register and makes an index of the records publicly available. For purposes of this paragraph, material that is reasonably available to the class of persons affected by the material is considered to be published in the Federal Register when the material is incorporated by reference with the approval of the Director of the Federal Register.

(1) Descriptions of DOT's organization, including its components and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

(2) Statements of the general course and methods by which DOT's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by DOT; and

(5) Each amendment, revision, or repeal of any material listed in paragraphs (a)(1) through (4) of this section.

(b) **Federal Register** locations. DOT makes its **Federal Register** publications and indices publicly available at the physical locations identified in § 7.12(b). The publications and indices can be accessed online at *http://www.gpoaccess.gov/fr/index.html.*

§ 7.12 What records are available in reading rooms, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(2), unless the following records are promptly published and offered for sale or published in the **Federal Register**, DOT and its components make the following records, and an index to the records, available in a reading room, including an electronic reading room if the records were created by DOT on or after November 1, 1996:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by DOT and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this part and that, because of the nature of their subject matter, DOT determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in (a)(4) of this section.

(b) *Reading room locations.* DOT makes its reading room records and indices (in the form of lists or links) available at *http://www.dot.gov/foia* and at the following physical locations:

(1) *DOT Dockets Office, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590:* hours of operation: 9 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone: (202) 366–9322, (202) 366–9826, or (800) 647–5527. DOT provides a computer terminal and printer at this

location for accessing electronic reading room records.

(2) *National Highway Traffic Safety Administration (NHTSA) Technical Information Services public record unit:* 1200 New Jersey Avenue, SE., Room W12–300, Washington, DC 20590; hours of operation: 9:30 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone (202) 366–2588. NHTSA provides a computer terminal and printer at this location for accessing electronic reading room records.

(3) *Other public record units maintained by DOT components (e.g., at regional offices):* Information concerning the availability of a computer terminal and printer at such units, and the location and hours of operation of such units, can be obtained through the DOT Dockets Office at (202) 366–9322, (202) 366–9826, or (800) 647–5527.

§ 7.13 How are copies of publicly available records obtained?

(a) *Copies of materials covered by this subpart that are published and offered for sale:* Records that are ordinarily made available to the public as a part of an information program of the Government, such as news releases and pamphlets, may be obtained upon request by contacting the appropriate DOT location identified in § 7.12(b) or the sources identified in § 7.41(g), and paying the applicable duplication fee or purchase price. Whenever practicable, DOT also makes the publications available at the appropriate physical locations identified in § 7.12(b).

(b) *Copies of materials covered by this subpart that are not published and offered for sale:* Such records may be ordered, upon payment of the appropriate fee (if any fee applies), through the applicable FOIA Requester Service Center or through the DOT Dockets Office identified in § 7.12(b):

(1) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means—US $0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(c) *Certified copies.* Copies are certified upon request by contacting the applicable FOIA Requester Service Center listed in § 7.27 and paying the fee prescribed in § 7.41(e).

§ 7.14 Redaction of information that is exempt from disclosure.

Whenever DOT determines it to be necessary to prevent the disclosure of information required or authorized to be withheld by FOIA or another Federal statute (such as, to prevent a clearly unwarranted invasion of personal privacy), DOT redacts such information from any record covered by this subpart that is published or made available. A full explanation of the justification for the deletion accompanies the record published or made available.

§ 7.15 Protection of records.

Records made available to the public under this subpart may not be removed, altered, destroyed, or mutilated (this excludes duplicate copies that are provided to a member of the public to take and keep). 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of Government records. 18 U.S.C. 2071 provides for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate, or destroy, Government records.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

§ 7.21 What does this subpart cover?

(a) Except as otherwise provided in paragraph (b) of this section, this subpart applies to reasonably described records that are made available in response to written requests under FOIA.

(b) This subpart does not apply to:

(1) Records published in the **Federal Register**.

(2) Records published and offered for sale.

(3) Records (other than frequently requested records) made available in a reading room.

(4) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.23(c)(7)(A) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(5) Informant records maintained by any criminal law enforcement component of DOT under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

7.22 Who administers this subpart?

(a) A Chief FOIA Officer is appointed by the Secretary to oversee DOT's compliance with the Act pursuant to 5 U.S.C. 552(k). The DOT official designated to serve as Chief FOIA Officer is identified at *http://www.dot.gov/foia*.

(b) Each DOT FOIA Requester Service Center listed in § 7.27 is the initial point of contact for providing information about its processing of requests.

(c) One or more Public Liaisons are designated by the Chief FOIA Officer for each DOT FOIA Requester Service Center listed in § 7.27. Public Liaisons assist requesters in reducing delays and resolving disputes, as described in 5 U.S.C. 552(k)(6).

(d) Authority to administer this subpart and to issue determinations with respect to initial requests and appeals of initial denials is delegated as follows:

(1) To the General Counsel for the records of the Office of the Secretary other than the Office of Inspector General, and for the concurrences required in paragraph (3)(C).

(i) The General Counsel may redelegate the authority to administer this part to other officials in the Office of the General Counsel.

(ii) The General Counsel or the General Counsel's designee may designate one or more attorneys on his or her staff to provide the concurrences required in paragraph (3)(C).

(2) To the Inspector General for records of the Office of Inspector General. The Inspector General may redelegate the authority to officers of that component.

(3) To the Administrator of each DOT component (other than the Inspector General) for records of that component.

(i) Each Administrator may redelegate to officers of that component the authority to administer this part in connection with defined groups of records.

(ii) Each Administrator may redelegate the authority to issue final determinations of appeals of initial denials to the Administrator's deputy or to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that DOT component.

(iii) Any such final determination by an Administrator or the Administrator's designee (following an appeal of an initial denial) is subject to concurrence by the General Counsel or the General Counsel's designee, if the final determination is not to disclose a record or portion of a record under this part, or not to grant a request for a fee waiver or reduction.

§ 7.23 What limitations apply to disclosure?

(a) *Policy.* It is DOT policy to make its records available to the public to the

greatest extent possible, in keeping with the spirit of FOIA. This includes releasing reasonably segregable and meaningful nonexempt information in a document from which exempt information is withheld.

(b) *Statutory disclosure requirement.* As provided in 5 U.S.C. 552(a)(3)(A), DOT makes reasonably described records available upon request from a member of the public, when the request is submitted in accordance with this subpart, except to the extent that the records contain information exempt from FOIA's mandate of disclosure as provided in 5 U.S.C. 552(b).

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1) Specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy, and in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act, 5 U.S.C. 552a or the Open Meetings Act, 5 U.S.C. 552b, as amended), in that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and

(ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA (5 U.S.C. 552(b)(3));

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, Tribal, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Redacted information.* DOT indicates the amount of information redacted from records released under the FOIA and the exemption(s) relied upon in redacting the information, at the place in the record where the redaction is made, when technically feasible and when doing so does not harm an interest protected by the exemption concerned.

(e) *Non-confidentiality of requests.* DOT releases the names of FOIA requesters and descriptions of the records they have sought, as shown on DOT FOIA logs, when the logs are requested under FOIA, except to the extent that a statutory exemption authorizes or requires withholding of the log information (for example, if the log information identifies a first-party requester).

§ 7.24 What must a FOIA request contain?

(a) Each person desiring access to or a copy of a record covered by this subpart must make a written request (via paper, facsimile or electronic mail) for the record. The request should—

(1) Indicate that it is being made under FOIA.

(2) Display the word "FOIA" prominently on the envelope or on the subject line of the e-mail or facsimile.

(3) Be addressed to the appropriate FOIA Requester Service Center as set forth in § 7.27.

(4) State the format (*e.g.,* paper, microfiche, computer diskette) in which the information is sought, if the requester has a preference (*see* § 7.26(c)).

(5) Describe the record or records sought to the fullest extent possible. In this regard, the request should describe the subject matter of the record and, if known, indicate the date when it was made, the place where it was made, and the individual or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office will contact the requester for additional information. So that the office may contact the requester for additional information, the request should provide the requester's complete contact information, including name, address, telephone number, and e-mail address, if any.

(b) With respect to fees, the request must—

(1) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other; *see* § 7.42(g)) in which the requester claims the request to fall and the basis of this claim (see subpart E of this part for fees and fee waiver requirements).

(2) Support any request for fee waiver by addressing, to the fullest extent possible, how the criteria set out in § 7.43(c) for establishing that the request is in the public interest have been met, if relevant.

(3) State the maximum amount of fees that the requester is willing to pay and/or include a request for a fee waiver or reduction (if a maximum amount is not stated by the requester, DOT will assume the requester is willing to pay up to US $25).

(c) If the requester seeks expedited processing at the time of the initial request, the request must include a statement supporting expedited processing, as set forth in § 7.31(c).

(d) A request is not considered to be a FOIA request if the record or records sought are insufficiently described such that DOT is unable to respond as required by FOIA. The twenty Federal working day limit for responding to requests, described in § 7.31(a)(2), will not start to run until the request is determined by DOT to be sufficiently understood to enable DOT to respond as contemplated under FOIA (or would have been so determined with the exercise of due diligence by an employee of DOT) and is considered received (see paragraph (e)).

(e) Provided the request is considered to be a FOIA request (see paragraph (d)), the request is considered received when it is first received by the FOIA office to which it should have been originally sent, as shown in § 7.27, but in any event not later than ten Federal working days after it is first received by any DOT

FOIA Requester Service Center identified in § 7.27.

(f) As provided in § 7.35, DOT's time limit for responding to a FOIA request as set forth in subpart D may be tolled one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester.

§ 7.25 How does DOT handle first-party requests?

(a) DOT processes FOIA requests from first-party requesters in accordance with this regulation. DOT also processes such requests in accordance with the Privacy Act (5 U.S.C. 552a) if the records reside in a Privacy Act system of records (defined in 5 U.S.C. 552a(a)(5) as a system from which information is retrieved by the individual's name or some other personal identifier). Whichever statute provides greater access is controlling.

(b) The identity of a first-party requester must be established to DOT's satisfaction before DOT will process the request. Acceptable methods of authenticating the requester's identity include those outlined in DOT's Privacy Act regulations at 49 CFR 10.37. Additional requirements may be imposed for systems of records containing particularly sensitive records. At a minimum, the requester's signature on the request letter must either be witnessed by a notary or include the date and the following statement immediately above the requester's signature: "I declare under penalty of perjury that the foregoing is true and correct."

§ 7.26 To what extent and in what format are records searched and made available?

(a) *Existing records.* A request may seek only records that are in existence at the time of the request. In determining which records are responsive to a request, DOT ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, DOT shall inform the requester of that date. DOT considers records created after the beginning of the search to be non-responsive to a request. A request made under this subpart may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons. DOT may, in its discretion, create a new record as an alternative to disclosing existing records, if DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material and if the requester consents to accept the newly-created record in lieu of the existing records.

(b) *Electronic records.* DOT makes a reasonable effort to search electronic records in the manner in which they are designed to be searched (i.e., to the extent that they are electronically searchable without reprogramming and without significantly interfering with the operation of the affected information system).

(c) *Format of production.* DOT provides records in the form or format sought by the requester, if the records are readily reproducible in that form or format.

(d) *Photocopying of records.* Original records ordinarily are copied except where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. Original records are not released from DOT custody. DOT may make records requested under this subpart available for inspection and copying during regular business hours at the place where the records are located.

(e) *If no responsive record is located.* If DOT cannot locate a requested record in agency files after a reasonable search (e.g., because the record was never created or was disposed of), DOT so notifies the requester.

§ 7.27 What are the designated DOT FOIA Requester Service Centers?

(a) A request for a record under this subpart may be submitted via paper, facsimile, or electronic mail to the FOIA Requester Service Center designated for the DOT component where the records are located, as indicated below (unless a more up-to-date address has been designated at *http://www.dot.gov/foia*):

(1) FOIA Requester Service Centers at 1200 New Jersey Avenue, SE., Washington, DC 20590:

(i) FOIA Requester Service Center at Federal Highway Administration, Room E64–302 (unless a more specific address has been designated by FHWA at *http://www.fhwa.dot.gov/foia*).

(ii) FOIA Requester Service Center at Federal Motor Carrier Safety Administration, Room W66–458.

(iii) FOIA Requester Service Center at Federal Railroad Administration, Room W33–437.

(iv) FOIA Requester Service Center at Federal Transit Administration, Room E42–315.

(v) FOIA Requester Service Center at Maritime Administration, Room W24–233.

(vi) FOIA Requester Service Center at National Highway Traffic Safety Administration, Room W41–311.

(vii) FOIA Requester Service Center at Office of the Secretary of Transportation, Room W94–122.

(viii) FOIA Requester Service Center at Office of Inspector General, Room W73–407.

(ix) FOIA Requester Service Center at Pipeline and Hazardous Materials Safety Administration, Room E26–109.

(x) FOIA Requester Service Center at Research and Innovative Technology Administration, Room E35–330.

(2) FOIA Requester Service Center at Federal Aviation Administration, 800 Independence Avenue, SW., Room 306, Washington, DC 20591 (unless a more specific address has been designated by FAA at *http://www.faa.dot.gov/foia*).

(3) FOIA Requester Service Center at Associate Administrator's Office, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, New York 13662–0520.

(b) If the person making the request does not know where in DOT the records are located, the person may submit the request to the FOIA Requester Service Center at Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Room W94–122, Washington, DC 20590 (*voice:* 202–366–4542; facsimile: 202–366–8536).

(c) Requests for records under this part, and Freedom of Information Act inquiries generally, may be made by accessing the DOT Home Page on the Internet (*http://www.dot.gov*) and clicking on the Freedom of Information Act link (*http://www.dot.gov/foia*).

§ 7.28 How does DOT handle requests that concern more than one Government agency?

(a) If the release of a DOT-created record covered by this subpart would be of concern to DOT and one or more other Federal agencies, the determination as to release is made by DOT, but only after consultation with the other concerned agency.

(b) If the release of a DOT-created record covered by this subpart would be of concern to DOT and a State, local, or Tribal Government, a territory or possession of the United States, or a foreign Government, the determination as to release is made by DOT, but only after consultation with the other concerned Governmental jurisdiction.

(c) DOT refers a request for a non-DOT-created record covered by this subpart (or the relevant portion thereof) for decision by the Federal agency that is best able to determine the record's exemption status (usually, this is the

agency that originated the record), but only if that agency is subject to FOIA. DOT makes such referrals expeditiously and notifies the requester in writing that a referral has been made. DOT informs the requester that the Federal agency to which DOT referred the request will respond to the request, unless DOT is precluded from attributing the record in question to that agency.

§ 7.29 When and how does DOT consult with submitters of commercial information?

(a) If DOT receives a request for information that has been designated by the submitter of the information as confidential commercial information, or that DOT has some other reason to believe may contain information of that type (*see* § 7.23(c)(4)), DOT notifies the submitter expeditiously and asks the submitter to submit any written objections to release (unless paragraphs (c) and (d) of this section apply). At the same time, DOT notifies the requester that notice and an opportunity to comment are being provided to the submitter. To the extent permitted by law, DOT affords the submitter a reasonable period of time to provide a detailed statement of any such objections. The submitter's statement must specify all grounds for withholding any of the information. The burden is on the submitter to identify with specificity all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The responsible DOT component, to the extent permitted by law, considers carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever DOT decides to disclose such information over the objection of a submitter, the office responsible for the decision provides the submitter with a written notice of intent to disclose, which is sent to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. The written notice to the submitter includes:

(1) A statement of the reasons for which the submitter's disclosure objections were not accepted;

(2) A description of the commercial information to be disclosed; and

(3) A specific disclosure date.

(c) The notice requirements of this section do not apply if:

(1) The information lawfully has been published or otherwise made available to the public; or

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section do not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration and addressed in 49 CFR part 512.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 12 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.12).

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component promptly notifies the submitter. The submitter may be joined as a necessary party in any suit brought against DOT or a DOT component for nondisclosure.

Subpart D—Time Limits

§ 7.31 What time limits apply to DOT with respect to initial determinations?

(a) *In general.* (1) DOT ordinarily responds to requests according to their order of receipt.

(2) DOT makes an initial determination whether to release a record requested pursuant to subpart C of this part within twenty Federal working days after the request is received by the appropriate FOIA Requester Service Center designated in § 7.27, except that DOT may extend this time limit by up to ten Federal working days, or longer, in accordance with § 7.34. In addition, DOT may toll this time limit one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester (*see* § 7.35).

(3) DOT notifies the requester of DOT's initial determination. If DOT decides to grant the request in full or in part, DOT makes the record (or the granted part) available as promptly as possible. If DOT denies the request in full or in part, because the record (or the denied part) is subject to an exemption, not within DOT's custody and control, or was not located following a reasonable search, DOT notifies the requester of the denial in writing and includes in the notice the reason for the determination, the right of the requester to appeal the determination, and the name and title of each individual responsible for the initial determination to deny the request. The denial letter includes an estimate of the volume of records or information withheld, in number of pages or other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption. DOT marks or annotates records disclosed in part to show both the amount and location of the information deleted whenever practicable (*see* § 7.23(d)).

(b) *Multi-track processing of initial requests.* (1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or based on the number of pages involved.

(2) A DOT component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). In that event, the component contacts the requester either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing of initial requests.* (1) Requests are processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, the request for expedited processing must be received by the FOIA office for the component that maintains the records requested, as identified in § 7.27.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (c)(1)(ii) of this section must establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component decides whether to grant it and notifies the requester of the decision. If DOT grants a request for expedited treatment, the request is given

priority and is processed as soon as practicable. If DOT denies a request for expedited processing, any appeal of that decision is acted on expeditiously.

§ 7.32 What time limits apply to a requester when appealing DOT's initial or final determination?

(a) *Denial of records request.* When the responsible DOT official determines that a record request will be denied in whole or in part, because the record is subject to an exemption, not in DOT's custody and control, or was not located following a reasonable search, DOT provides the requester with a written statement of the reasons for that determination, as described in § 7.31(a)(3), and of the right to appeal the determination within DOT.

(b) *Denial of fee waiver.* When the responsible DOT official denies, in whole or in part, a request for a waiver of fees made pursuant to § 7.24(b) or § 7.43(c), DOT provides the requester with written notification of that determination and of the right to appeal the determination within DOT.

(c) *Denial of expedited processing.* When the responsible DOT official denies a request for expedited processing made pursuant to § 7.31(c), DOT provides the requester with written notice of that determination and of the right to appeal the determination within DOT.

(d) *Right to administrative appeal.* Any requester to whom a record has not been made available within the time limits established by § 7.31 and any requester who has been provided a written determination pursuant to paragraphs (a), (b), or (c) of this section may appeal to the responsible DOT official.

(1) Each appeal must be made in writing within thirty calendar days from the date the initial determination is signed and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. Appeals must be submitted via conventional mail or facsimile, not via electronic mail. The envelope in which a mailed appeal is sent or the subject line of an appeal sent via facsimile should be prominently marked: "FOIA Appeal." The twenty Federal working day limit described in § 7.33(a) will not begin to run until the appeal has been identified as an appeal under FOIA, or would have been so identified with the exercise of due diligence, by a DOT employee, and has been received by the appropriate office.

(2) Whenever the responsible DOT official determines it is necessary, the official may require the requester to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. DOT's time limit for responding to an appeal may be extended as provided in § 7.34. The decision of the responsible DOT official as to the availability of the record, the appropriateness of a fee waiver or reduction, or the appropriateness of expedited processing, constitutes final agency action for the purpose of judicial review.

(3) The decision of the responsible DOT official to deny a record request, to deny a request for a fee waiver or reduction, or to deny a request for expedited processing is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(4) When the responsible DOT official denies an appeal, the requester is informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

(e) *Right to judicial review.* Any requester who has not received an initial determination on his or her request within the time limits established by § 7.31 can seek immediate judicial review, which may be sought without the need to first submit an administrative appeal. Any requester who has received a written determination denying his or her administrative appeal or who has not received a written determination of his or her administrative appeal within the time limits established by § 7.33 can seek judicial review. A determination that a record request is denied, that a request for a fee waiver or reduction is denied, and/or that a request for expedited processing is denied does not constitute final agency action for the purpose of judicial review unless it is made by the responsible DOT official. Judicial review may be sought in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

§ 7.33 What time limits apply to DOT with respect to administrative appeals (final determinations)?

(a) *In general.* (1) FOIA offices ordinarily process appeals according to their order of receipt.

(2) DOT issues a determination with respect to any appeal made pursuant to § 7.32(d) within twenty Federal working days after receipt of such appeal, except that in unusual circumstances DOT may extend this time limit by up to ten Federal working days in accordance with § 7.34(a) or for more than ten Federal working days in accordance with § 7.34(b) (but only if DOT did not extend the time limit for its initial response based on unusual circumstances). DOT notifies the requester making the appeal immediately, in writing, if the agency takes an extension of time. DOT may inform the requester making the appeal, at any time, of exceptional circumstances delaying the processing of the appeal (*see* § 7.34(c)).

(b) *Multi-track processing of appeals.* (1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex appeals based on the amount of work and/or time needed to process the appeal, or based on the amount of information involved.

(2) A DOT component using multi-track processing may provide persons making appeals in its slower track(s) with an opportunity to limit the scope of their appeals in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the person making the appeal either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing of appeals.* (1) An appeal is processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the appeal or at a later time. For a prompt determination, a request for expedited processing must be received by the component that is processing the appeal for the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A

requester within the category in paragraph (c)(1)(ii) of this section must establish a particular time urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. A person granted expedited processing under § 7.31(c) need merely certify that the same circumstances apply.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the appeal will be given priority and will be processed as soon as practicable. If a request for expedited processing of an appeal is denied, no further administrative recourse is available.

§ 7.34 When and how are time limits applicable to DOT extended?

(a) In unusual circumstances as specified in this section, DOT may extend the time limits prescribed in §§ 7.31 and 7.33 by written notice to the person making the request or appeal, setting forth the reasons for the extension and the date on which a determination is expected to be issued. Such notice may not specify a date that would result in a cumulative extension of more than ten Federal working days without providing the requester an opportunity to modify the request as noted in this section. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; and/or

(3) The need for consultation, which will be conducted with all practicable speed, with any other agency having a substantial interest in the determination of the request or among two or more DOT components having substantial interest therein.

(b) When the extension is for more than ten Federal working days, the written notice provides the requester with an opportunity to either modify the request (e.g., by narrowing the record types or date ranges) so that it may be processed within the extended time limit, or arrange an alternative time period with the DOT component for processing the request (*e.g.,* by prioritizing portions of the request).

(c) The DOT component may inform the requester, at any time, of exceptional circumstances that apply to the processing of the request or appeal (*i.e.,* if the component is reducing a backlog of requests or appeals in addition to processing current requests, or is experiencing an unexpected deluge of requests or appeals), as provided in 5 U.S.C. 552(a)(6)(C).

(d) When a DOT component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, DOT may aggregate the requests for the purposes of fees and processing activities, which may result in an extension of the processing time. Multiple requests involving unrelated matters are not aggregated.

§ 7.35 When and how is the 20-day time limit for rendering an initial determination tolled?

The twenty Federal working day time period in which to render an initial determination will proceed without interruption except as provided in the following:

(a) DOT may toll the initial twenty Federal working day time period one time for the purpose of seeking additional information needed to clarify the request. Examples of such instances include but are not limited to:

(1) When clarification is needed with regard to the scope of a request; or

(2) When the description of the record(s) being sought does not enable the component handling the request to identify or locate the record(s).

(b) DOT may toll the initial twenty Federal working day time period as often as necessary to clarify fee issues with the requester. Examples of such instances include but are not limited to:

(1) When the requester has not sufficiently identified the fee category applicable to the request; or

(2) When the requester has not stated a willingness to pay fees as high as anticipated by DOT; or

(3) When a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by DOT.

Subpart E—Fees

§ 7.41 When and how are processing fees imposed for records that are made available under subpart B or processed under subpart C?

(a) DOT imposes fees for services that DOT performs for the public under subparts B and C of this part. Fees apply to all required and special services performed by DOT employees, including employees of non-appropriated fund activities, and contractors, if utilized.

(b) DOT may assess a fee for time spent searching for records requested under subpart C even if the search fails to locate records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, DOT may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When a request is made under subpart C by a first-party requester and DOT processes the request under both FOIA and the Privacy Act, DOT determines the fees for records in DOT Privacy Act systems of record in accordance with the Privacy Act (as implemented by DOT regulations at 49 CFR part 10) rather than the FOIA.

(d) When DOT aggregates requests made under subpart C (*see* § 7.34(d)), DOT apportions fees as set forth in § 7.43(b).

(e) As a special service, DOT may certify copies of records made available under subpart B or released under subpart C, upon request and payment of the applicable fee: with the DOT seal (where authorized)—US $10; or true copy, without seal—US $5. Certified copies can be requested by contacting the applicable FOIA Requester Service Center (see § 7.27) or the DOT Dockets Office identified in § 7.12(b)(1).

(f) DOT makes transcripts of hearings or oral arguments available for inspection only. If transcripts are prepared by a nongovernmental contractor and the contract permits DOT to handle the reproduction of further copies, DOT assesses duplication fees as set forth in § 7.42(d). If the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

(g) In the interest of making documents of general interest publicly available at as low a cost as possible, DOT arranges alternative sources whenever possible. In appropriate instances, material that is published and offered for sale may be purchased from the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402–0001; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

§ 7.42 What is DOT's fee schedule for records requested under subpart C?

(a) DOT calculates the hourly rates for manual searching, computer operator/programmer time, and time spent reviewing records, when performed by employees, based on the grades and rates in the Washington-Baltimore Federal White-Collar Pay Schedule or equivalent grades, plus 16% to cover fringe benefits, as follows:

(1) GS–1 through GS–8 (or equivalent)—Hourly rate of GS–5 step 7 plus 16%.

(2) GS–9 through GS–12 (or equivalent)—Hourly rate of GS–10 step 7 plus 16%.

(3) GS–13 through GS–14 (or equivalent)—Hourly rate of GS–13 step 7 plus 16%.

(4) GS–15 and above (or equivalent)—Hourly rate of GS–15 step 7 plus 16%.

(b) DOT determines the standard fee for a manual or electronic search to locate records by multiplying the searcher's hourly rate as calculated from the chart in paragraph (a) of this section by the time spent conducting the search.

(c) DOT's standard fee for review of records is the reviewer's rate as calculated from the chart in paragraph (a) of this section, multiplied by the time the reviewer spent determining whether the located records are responsive to the request and whether the responsive records or segregable portions are exempt from disclosure, as explained in paragraphs (h), (i), and (j) of this section.

(d) DOT determines the standard fee for duplication of records as follows:

(1) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment)—US $0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(e) If DOT utilizes a contractor to perform any services described in this section, the standard fee is based on the equivalent hourly rate(s). DOT does not utilize contractors to discharge responsibilities that only DOT may discharge under the FOIA.

(f) In some cases, depending upon the category of requester and the use for which the records are requested, the fees computed in accordance with the standard fee schedule in paragraphs (a) through (e) of this section are either reduced or not charged, as prescribed by other provisions of this subpart.

(g) For purposes of fees only, there are four categories of FOIA requests:

(1) Requests submitted by a commercial entity and/or for a commercial use;

(2) Requests submitted by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research (and not for a commercial use);

(3) Requests submitted by a representative of the news media; and

(4) All other requests.

(h) When records are requested by a commercial requester and/or for a commercial use, the fees assessed are reasonable standard charges for document search, duplication, and review.

(i) When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media (*i.e.,* for a non-commercial use), fees are limited to reasonable standard charges for document duplication.

(j) For any request not described in paragraph (h) or (i) of this section, fees are limited to reasonable standard charges for document search and duplication.

(k) Fees under this subpart do not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by DOT in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

§ 7.43 When are fees waived or reduced, for records requested under subpart C?

(a) DOT does not charge fees to any requester making a request under subpart C of this part for the following services:

(1) Services for which the total amount of fees that could be charged for the particular request (or aggregation of requests) is less than US $20, after taking into account all services that must be provided free of charge or at a reduced charge.

(2) The first two hours of search time, unless the records are requested for commercial use.

(3) Duplication of the first 100 pages (standard paper, not larger than 8.5 x 14 inches) of records, unless the records are requested for commercial use.

(4) Review time spent determining whether a record is exempt from disclosure, unless the record is requested for commercial use. (DOT does not charge for review time except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. DOT does not charge for review at the administrative appeal level. However, when records or portions of records withheld under an exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.)

(b) When DOT aggregates requests as provided in § 7.34(d), DOT charges each requester a ratable portion of the fees charged for combined services rendered on behalf of all requesters.

(c) DOT waives or reduces the fees described in § 7.42(i) and (j) when the requester makes a fee waiver or reduction request as provided in § 7.24(b) and establishes that disclosure of the information is in the public interest as provided in 5 U.S.C. 552 and this paragraph, and the DOT official having initial denial authority determines that disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester. The requester must establish all of the following factors to DOT's satisfaction to show that the request is in the public interest:

(1) That the subject matter of the requested records concerns the operations or activities of the Federal Government.

(2) That the disclosure is likely to contribute to an understanding of Federal Government operations or activities.

(3) That disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons (to establish this factor, the requester must show an intent and ability to disseminate the requested information to a reasonably broad audience of persons interested in the subject; for example, merely maintaining a Web site is insufficient to establish this factor).

(4) That the contribution to public understanding of Federal Government operations or activities will be significant.

(5) That the requester does not have a commercial interest that would be furthered by the requested disclosure or that the magnitude of any identified

commercial interest to the requester is not sufficiently large in comparison with the public interest in disclosure to render the disclosure one that is primarily in the commercial interest of the requester.

(d) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee.

(e) DOT furnishes documents without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial at which the requester testified.

(f) DOT does not assess the following fees when DOT fails to comply with the time limits under §§ 7.31 or 7.33 and no unusual or exceptional circumstances (see § 7.34(a) and (c)) apply to the processing of the request or appeal:

(1) Search fees otherwise chargeable under § 7.42(h) and (j); and

(2) Duplication fees otherwise chargeable under § 7.42(i).

§ 7.44 How can I pay a processing fee for records requested under subpart B or subpart C?

(a) Fees should be paid online, using a credit card, debit card, or electronic check. The DOT FOIA page (*http://www.dot.gov/foia*) has direct links to the electronic payment site. Any fees paid with a paper check, draft, or money order must be made payable to the U.S. Treasury and delivered as directed by the applicable FOIA Requester Service Center identified in § 7.27 (if the fees are for records made available under subpart C) or the DOT Dockets Office identified in § 7.12(b)(1) (if the fees are for records made available under subpart B).

§ 7.45 When are pre-payments required for records requested under subpart C, and how are they handled?

(a) When DOT estimates that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requester will likely exceed US $25, DOT notifies the requester of the estimated amount of the fees, unless the requester has previously indicated a willingness to pay fees as high as those anticipated. In cases where DOT notifies the requester that actual or estimated fees may amount to more than US $25, the time limit for responding to the request is tolled until the requester has agreed to pay the anticipated total fee (see § 7.35). The notice also informs the requester how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(b) DOT may require payment of fees prior to actual duplication or delivery of any releasable records to a requester. However, advance payment, i.e., before work is commenced or continued on a request, is not required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed US $250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous request to any part of the U.S. Government.

(c) When paragraph (b)(1) of this section applies, DOT notifies the requester of the estimated cost. If the requester has a history of prompt payment of FOIA fees, the requester must furnish satisfactory assurance of full payment of the estimated charges. Otherwise, the requester may be required to make advance payment of any amount up to the full estimated charges.

(d) When paragraph (b)(2) of this section applies, DOT requires the requester to either demonstrate that the fee has been paid or pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in § 7.46. DOT also requires such a requester to make an advance payment of the full amount of the estimated fee before DOT begins processing a new request or continues processing a pending request.

(e) In the event that a DOT component is required to refund a prepayment, the processing of the refund may necessitate collection of the requester's Taxpayer Identification Number or Social Security Number and direct deposit information (bank routing number and bank account number) under 31 U.S.C. 3325, 31 U.S.C. 3332, and 31 CFR Part 208.

§ 7.46 How are late payments handled?

(a) DOT assesses interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest accrues from the date of the notice of amount due at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing stops the accrual of interest, even if the payment has not been processed.

(b) If DOT does not receive payment of the fees charged within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, DOT assesses an administrative charge to cover the cost of processing and handling the delinquent claim. In addition, DOT applies a penalty charge with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, DOT uses other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, to encourage payment of amounts overdue.

Issued in Washington, DC, on December 20, 2010.

Ray LaHood,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

RIN 0648–XA016

2011 Annual Determination for Sea Turtle Observer Requirement

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

ACTION: Notification of annual determination.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2011, pursuant to its authority under the Endangered Species Act (ESA). Through an AD, NMFS identifies fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to prevent or reduce prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified in the 2010 AD (*see* Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request, until 2014.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301–713–2322; Ellen Keane, Northeast Region, 978–282–8476;

Dennis Klemm, Southeast Region, 727–824–5312; Elizabeth Petras, Southwest Region, 562–980–3238; Kim Maison, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at *http://www.nmfs.noaa.gov/pr/species/turtles/regulations.htm* or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

2011 Annual Determination

NMFS is providing notification that the agency will not identify additional fisheries to observe for the 2011 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of resources to implement new or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). Fisheries identified in the 2010 AD (*see* Table 1) remain on the AD and are therefore required to carry observers, upon NMFS' request, until 2014.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
Trawl Fisheries	
Atlantic shellfish bottom trawl	2010–2014
Mid-Atlantic bottom trawl	2010–2014
Mid-Atlantic mid-water trawl (including pair trawl)	2010–2014
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2010–2014
Gillnet Fisheries	
CA halibut, white seabass and other species set gillnet (>3.5 in. mesh)	2010–2014
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2010–2014
Chesapeake Bay inshore gillnet	2010–2014
Long Island inshore gillnet	2010–2014

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE ANNUAL DETERMINATION—Continued

Fishery	Years eligible to carry observers
Mid-Atlantic gillnet	2010–2014
North Carolina inshore gillnet	2010–2014
Northeast sink gillnet	2010–2014
Southeast Atlantic gillnet	2010–2014
Trap/Pot Fisheries	
Atlantic blue crab trap/pot	2010–2014
Atlantic mixed species trap/pot	2010–2014
Northeast/mid-Atlantic American lobster trap/pot	2010–2014
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2010–2014
Mid-Atlantic menhaden purse seine	2010–2014
U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	2010–2014
Virginia pound net	2010–2014

Dated: December 17, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32341 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 75, No. 247

Monday, December 27, 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

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995. Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.

Form Number: N/A.

Title: USAID Faith-Based and Community Initiatives Contact Survey.

Type of Submission: New Information Collection.

Purpose: The Center for Faith-Based and Community Initiatives (CFBCI) supports the commitment from the White F-louse and USAID to expand our partnership community by building broad and deep relationships with the nongovernmental organization (NGO) community at large. In order to better coordinate the Agency's work with NGOs and to improve the effectiveness and extent of the Agency's outreach to the NGO community, the CFBCI is requesting to send out a voluntary, electronic survey to contacts for whom we have no organizational affiliation who have previously interacted with or expressed interest in working with USAID and the CFBCI. The survey will request updated contact and organizational information on NGOs working in international development and humanitarian relief around the world. By collecting such information, the Agency will be able to engage these organizations in a more efficient and less duplicative way. In addition, it will allow the Agency to better monitor its success in engaging a broad range of NGOs. Responding to the survey is optional. An organization's response or non-response will not have any impact positive or negative—on its future relationship with the Agency.

Annual Reporting Burden: Respondents: 3,000.

Total annual responses: 3,000.

Total annual hours requested: 750 hours.

Dated: December 15, 2010.

Lynn P. Winston,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

[FR Doc. 2010–32301 Filed 12–23–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.

Form Number: N/A.

Title: USAID Visa Compliance System (VCS).

Type of Submission: New Information Collection.

Purpose: The U.S. Agency for International Development, under the Foreign Assistance Act of 1961, as amended, engages in a broad range of sustainable economic assistance activities that provide technical and academic training in the United States and abroad for foreign nationals. These foreign nationals have been selected for training by USAID in order to advance U.S. foreign policy objectives by supporting: Economic growth, agriculture and trade; global health; and democracy conflict prevention and humanitarian assistance. Training can consist of long-term academic degree programs, short-term technical courses, seminars, workshops, or other learning activities intended to impart certain knowledge and information.

USAID must tract training data for all foreign nationals who receive training funded by USAID. In cases where foreign nationals must travel to the U.S. to participate in training or invitational travel, the approvals for the eligibility to obtain the J visa are captured in the Visa Compliance System (VCS). The Visa Compliance system has two purposes: First, to secure a J–1 visa for these foreign nationals traveling to the US.; second, to enable USAID to be in compliance with external requirements of the Department of Homeland Security. With certain exceptions, the foreign nationals that USAID sponsors for travel to the U.S. are considered exchange visitors. The VCS provides an audit trail regarding exchange visitor, his or her training program or circumstances, as well as other relevant documentation.

Annual Reporting Burden: Respondents: 600.

Total annual responses: 8,000.

Total annual hours requested: 2,000 hours.

Dated: December 15, 2010.

Lynn P. Winston,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

[FR Doc. 2010–32303 Filed 12–23–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to ONE for review and clearance under the Paperwork Reduction Act of 1995, Public Law 10413. Comments regarding this information collection are best assured of having their full effect if

received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New. Form Number: N/A.

Title: USAID Faith-Based and Community Organization Survey.

Type of Submission: New Information Collection.

Purpose: The Center for Faith-Based and Community Initiatives (CFBCI) supports the commitment from the White House and USAID to expand our partnership community by building broad and deep relationships with the nongovernmental organization (NGO) community at large. In order to better coordinate the Agency's work with NGOs and to improve the effectiveness and extent of the Agency's outreach to the NGO community, the CFECI is requesting to send out a voluntary electronic survey to contacts with NGOs who have previously interacted with or expressed interest in working with USAID and the CFBCI. The survey will request updated contact and organizational information on NGOs working in international development and humanitarian relief around the world. By collecting such information, the Agency will be able to engage these organizations in a more efficient and less duplicative way. In addition, it will allow the Agency to better monitor its success in engaging a broad range of NGOs.

Responding to the survey is optional. An organization's response or nonresponse will not have any impact—positive or negative on its future relationship with the Agency.

Annual Reporting Burden:

Respondents: 4,000.

Total annual responses: 4,000.

Total annual hours requested: 1,000 hours.

Dated: December 15, 2010.

Lynn P. Winston,

Acting Chief, Information and Records Division, Office of Management Services, Bureau of Management.

[FR Doc. 2010–32305 Filed 12–23–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator of USAID has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period beginning January 15, 2011 is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Deborah Lewis, 202–712–0936.

Dated: December 13, 2010.

Benjamin Hubbard,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 2010–32419 Filed 12–23–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act: Revision of Privacy Act Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice to Revise Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to revise two Privacy Act Systems of Records entitled "Information on Persons Disqualified from the Supplemental Nutrition Assistance Program" and "Supplemental Nutrition Assistance Program Retailer Information." These systems are owned, administered, and secured by the Food and Nutrition Service (FNS). The primary purpose of these systems is to assist in the administration and enforcement of the Supplemental Nutrition Assistance Program (SNAP), as well as other Federal and State laws.

DATES: *Effective Date:* This notice will be adopted without further publication in the **Federal Register** on January 26, 2011, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer Weatherly, Freedom of Information Act Officer, Information Management Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone (703) 605–0773 or via e-mail at *Jennifer.weatherly@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, FNS proposes to revise USDA/FNS–5, *Information on Persons Disqualified from the Supplemental Nutrition Assistance Program,* and USDA/FNS–9, *Supplemental Nutrition Assistance Program Retailer Information,* to reflect the safeguarding of data from security breaches and updates to the collection of data. These two systems of records are being revised to include a change to the routine use and exemptions that protect the information within the systems. The system of records notices explain how the records within the system will be used and with whom they will be shared. USDA/FNS–9 contains personal information from owners and officers of firms and other entities currently participating in SNAP and those who have previously participated in the program. USDA/FNS–5 contains personal information about persons disqualified from participating in SNAP.

Dated: December 14, 2010.

Thomas J. Vilsack,

Secretary of Agriculture.

REVISION

USDA/FNS–5

SYSTEM NAME:

USDA/FNS–5, Information on Persons Disqualified from the Supplemental Nutrition Assistance Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Supplemental Nutrition Assistance Program, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. The data will be maintained at the Department's National Computer Center, Kansas City, Missouri (NCC–KC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information about individuals who have been disqualified from SNAP participation

for intentionally violating SNAP regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information (first name, middle initial, last name, Social Security number (SSN), date of birth, and sex) about individuals disqualified from SNAP and information identifying the location, date(s) and length(s) of any disqualification determined and imposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2011–2031.

PURPOSE(S):

To facilitate the Congressional mandate to increase the severity of disqualifications from SNAP for repeated instances of fraudulently obtaining SNAP benefits and to verify eligibility of applicants for SNAP benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed, as part of a computer matching program or otherwise, to State agency personnel responsible for investigating or prosecuting violations of SNAP regulations, and to Federal, State, and local officials responsible for administration of SNAP. Records contained in this system also may be disclosed to the General Accounting Office for program audit purposes.

Information security breaches will be disclosed to appropriate agencies, entities, and persons when (1) FNS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(1) FNS may disclose information from this system of records to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee of the USDA in his or her official capacity, any USDA employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation; provided, however, that in each case, USDA determines that such disclosure is compatible with the purpose for which the records were collected.

(2) FNS may disclose records from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office written permission to inquire on his or her behalf.

(3) Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on the Department's computers at the NCC–KC or on magnetic tapes or other electronic media at that facility.

RETRIEVABILITY:

Records may be indexed and retrieved by name of the individual, by SSN, by Federal Information Processing Standard (FIPS) code, or by a State case-file identification number.

SAFEGUARDS:

Records will be available only to identified State agency personnel charged with SNAP enforcement. Voice recognition or other biometric technology may be used; such a system will release information only to authorized individuals calling from authorized telephone numbers. Online access to the NCC–KC database will be restricted to FNS personnel charged with system management. The NCC–KC is the repository of numerous Department systems of records and other sensitive databases. It was constructed and is maintained as a highly secure facility. State agencies will be provided information from this system of records only upon entering into a written agreement with FNS. This agreement includes the understanding that State agencies will provide full security for data released to them and will limit access to this data to authorized personnel only. Any reports generated by FNS will be for system evaluation purposes only and will be maintained in secured offices and facilities.

RETENTION AND DISPOSAL:

Because the law mandates a longer disqualification period if there have been any prior disqualifications, FNS intends to maintain these records permanently in an electronic or magnetic tape mode.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, room 816, Alexandria, Virginia 22302. *Telephone:* (703) 305–2413.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to the individual, from the system manager listed above.

RECORD ACCESS PROCEDURE:

An individual may obtain information about a record in the system which pertains to the individual by submitting a written request to the systems manager listed above. The envelope and the letter should be marked "Privacy Act Request."

A request for information pertaining to an individual should contain the name, address, date of birth and SSN of the individual, and any other information that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system is provided by State agency personnel responsible for investigating cases involving intentional violations of SNAP regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6))

permits the government to withhold information when the disclosure would constitute a clearly unwarranted invasion of personal privacy of third parties.

SYSTEM NAME:

USDA/FNS–9 Supplemental Nutrition Assistance Program Retailer Information.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained in two host computer databases and in FNS field offices located throughout the United States. The two host computer databases, the Store Tracking and Redemption System (STARS) and Anti-fraud Locator using EBT Retailer Transactions (ALERT), are located within secure computing environments in the Office of Information Technology, Customer Service Branch, 45 South 7th Street, Suite 1810, Minneapolis, Minnesota 55402. The location of each FNS field office may be found in the local telephone book. A list of FNS field offices may also be obtained from the Internet at the FNS Web site located at: *http://www.fns.usda.gov/cga/Contacts/FieldOffices/default.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The STARS system consists of personal information from owners and officers of stores and other entities currently participating in SNAP, as well as those owners and officers who have previously participated in the program. The individual paper records (i.e., applications for authorization) located in FNS field offices also contain personal information from owners and officers who applied for authorization to participate in SNAP but were denied authorization. The ALERT system consists of household account numbers issued by State Agencies and electronic benefit transfer (EBT) card numbers assigned to each program recipient who has conducted at least one transaction at an approved retail grocery store. ALERT does maintain personal identifying information as some State Agencies embed SSN within the State issued household number.

CATEGORIES OF RECORDS IN THE SYSTEM:

The applications for authorization and reauthorization are in the STARS database and in the files of FNS field offices. The applications contain the following personal information regarding owners and officers: Name, home address, social security number, and date of birth. The SSNs are collected only from owners of sole proprietorships, partnerships, principal shareholders of private corporations, officers of cooperatives, and spouses of principal owners if a store is located in a community property state. The STARS database also maintains the following business information: corporation name and address, employer identification number (EIN), and financial data (i.e., food sales, gross sales, and SNAP redemption data) relative to each entity that applied and/or was authorized to accept program benefits. ALERT maintains a record of every electronic SNAP benefit transaction conducted at any authorized retail grocery store.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. 2018); section 405(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)); and section 6109(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)).

PURPOSE(S):

This information will be shared with other Federal and State entities to assist in the administration and enforcement of the Food and Nutrition Act of 2008 (FNA), as well as other Federal and State laws. The SSNs and employer identification numbers (EIN) of store owners will only be shared with Federal agencies which maintain those numbers in their files. The STARS database is used to process retail grocery stores that wish to apply to accept benefits and to monitor ongoing SNAP participation and eligibility. ALERT is a fraud detection system that is used to monitor SNAP electronic transaction activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Limitations on Disclosure under the Following Routine Uses (1) through (11): Information obtained from applicants under the authority of 7 U.S.C. 2018(c) may be used or disclosed only as specified in 7 U.S.C. 2018 (c). With the exception of the SSNs and EINs obtained from applicants, 7 U.S.C. 2018(c) gives FNS the authority to disclose the contents of an initial application, or other information submitted by an applicant to other Federal and State law enforcement and investigative agencies for the purposes of administering or enforcing the FNA or any other Federal or State law. 7 U.S.C. 2018(c) also limits the use of the information obtained by applicants. That is, the above mentioned entities may only use this information for purposes directly connected with the administration and enforcement of the FNA or any other Federal or State law.

Information obtained from applicants includes ownership information, sales information, and redemption data.

Information security breaches will be disclosed to appropriate agencies, entities, and persons when (1) FNS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FNS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FNS or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FNS efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The use and disclosure of SSNs and EINs obtained by applicants is also covered in the Social Security Act and the Internal Revenue Code. In accordance with the Social Security Act and the Internal Revenue Code, applicant SSNs and EINs may be disclosed only to other Federal agencies authorized to have access to SSNs and EINs and maintain these numbers in their files, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency (42 U.S.C. 405(c)(2)(C)(iii); 26 U.S.C. 6109(f)). Routine Uses (1) through (11):

(1) FNS may disclose information from these systems of records to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee of the USDA in his or her official capacity, any USDA employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case USDA determines that such disclosure

is compatible with the purpose for which the records were collected.

(2) In the event that material in these systems indicates a violation of the FNA or any other Federal or State law whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, FNS may disclose the relevant records to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) FNS may disclose records from these systems of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(4) FNS may use information from these systems of records, including SSNs and EINs, to collect and report on delinquent debt and may disclose the information to other Federal and State agencies, as well as private collection agencies, for purposes of claims collection actions including, but not limited to, administrative offset and referral to DOJ for litigation. (**Note:** SSNs and EINs will only be disclosed to Federal agencies.)

(5) FNS may disclose information from these systems of records to other Federal and State agencies to respond to specific requests from such Federal and State agencies for the purpose of administering the FNA as well as other Federal and State laws.

(6) FNS may disclose information from these systems of records to other Federal and State agencies to verify information reported by applicants and participating firms, and to assist in the administration and enforcement of the FNA as well as other Federal and State laws.

(7) FNS may disclose information from these systems of records to other Federal and State agencies for the purpose of conducting computer matching programs.

(8) FNS may disclose information (excluding EINs) from these systems of records to private entities having contractual agreements with USDA for designing, developing, and operating the system, and for verification and computer matching purposes.

(9) FNS will disclose information from these systems of records to the Internal Revenue Service, for the purpose of reporting delinquent retailer and wholesaler monetary penalties of $600 or more for violations committed under the SNAP. FNS will report each delinquent debt to the Internal Revenue Service on Form 1099–C (Cancellation of Debt). USDA/FNS will report these debts to the Internal Revenue Service under the authority of the Income Tax Regulations (26 CFR Parts 1 and 602) under section 6050P of the Internal Revenue Code (26 U.S.C. 6050P).

(10) FNS may disclose information from these systems of records to State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), authorized under section 17 of the Child Nutrition Act of 1966 (CNA)(42 U.S.C. 1786), for purposes of administering CNA and the regulations issued under that CNA.

(11) Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tapes, computer disks, and other electronic media.

RETRIEVABILITY:

In STARS, the personal identifying information is retrievable by owner's name and by SSN. In ALERT, the personal identifying information is retrievable by the State-issued household number assigned to each program recipient.

SAFEGUARDS:

(1) *Authorized Users:* When designing, developing and/or operating a system of records on individuals, contractors are required to comply with all provisions of the Privacy Act. Contractors are required to maintain and protect the personal data and cannot release or share data without consulting with FNS. Access to records maintained within FNS is limited to those staff officials responsible for the subject system of records. Otherwise, access is limited to persons authorized and needing to use the records, including project directors, contract officers, programmers, analysts, statisticians, statistical clerks, and computer technicians on the staff of the contractors or in the FNS. Both systems utilize USDA's eAuthentication services to ensure the valid identity of the user.

(2) *Physical Safeguards:* Paper records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process personal identifiable data are located in secured areas and are accessible only to authorized users. Backup records which are stored offsite shall be used and stored under the same secure conditions.

(3) *Procedural Safeguards:* In order to access STARS or ALERT, each authorized individual is given a personal access ID and password. The individual's password must be changed at least every 45 days or whenever the individual feels it might have been compromised.

Access to personal information contained in the STARS database and to the paper record files is restricted to those individuals who have been authorized by FNS and who have a need to know such information in performing their official duties in administering the FNA and other Federal and State laws. SSNs cannot be viewed on screen in STARS by those individuals who are not specifically authorized to view them. FNS personnel, project officers, and contract officers oversee compliance with these requirements. When appropriate, FNS personnel will review the site facilities to ensure that records have been maintained in accordance with the terms of this notice.

RETENTION AND DISPOSAL:

STARS and ALERT maintain personal identifying information indefinitely. The applications for authorization and reauthorization are kept in the FNS field offices for the duration each retail grocery store participates in the Program and then destroyed pursuant to the applicable document retention and disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefit Redemption Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 424, Alexandria, Virginia, 22302.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records from the system manager. The request must be in writing.

RECORD ACCESS PROCEDURES:

An individual who wishes to request access to records in the system which pertains to the individual may submit a written request to the system manager. The envelope and the letter should be marked, "Privacy Act Request." An individual may be required to reference the record by furnishing name, address, SSN, and/or other identifiers needed by FNS.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. The request should include, as appropriate, the reasons for contesting it, and the proposed amendment to the information with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system comes from the authorization and reauthorization applications of stores and other entities which are currently participating in SNAP, as well as information on file for those entities which have previously participated in the program. Personal information in this system of records is also obtained from the owners and officers of such entities as reported on the authorization and reauthorization applications. The STARS database also keeps SNAP redemption history on such entities. The database maintains the dollar amount of SNAP benefits accepted by each entity currently authorized or previously authorized. ALERT maintains SNAP electronic transaction history of each entity currently authorized or previously authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

[FR Doc. 2010–32457 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; National Incident Support Stakeholder Assessment

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, National Incident Support Contracts Stakeholders Survey.

DATES: Comments must be received by e-mail on or before February 25, 2011 to be assured for consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be e-mailed to *NCA@fs.fed.us* with "Stakeholders Assessment Comments" entered into the subject line of the e-mail or mailed to USFS–WO, FESSAA; 560 Loon Lake Road, Eagle River, WI 54521. The public may inspect comments via the Internet at: *http://www.fs.fed.us/business/incident/fessaa.php.*

FOR FURTHER INFORMATION CONTACT: Teri Sabin, WO Acquisition Procurement Analyst at 715–479–6643. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: National Incident Support Stakeholder Assessment.

OMB Number: 0596–New.

Type of Request: New.

Abstract: Contracts for incident support related to wildfire and disaster response are awarded at the national level by the Forest Service's Incident Support Branch. In an effort to ensure procurement methods used are the most effective, the Forest Service will perform an extensive assessment of its current practices and procedures. During this review, the agency will analyze information collected from both internal and external stakeholders to clearly define best practices. Stakeholders include Forest Service employees, other Federal agencies, industry representatives, associations, professional organizations, and prospective contractors.

To comply with the Paper Reduction Act (PRA), the Forest Service requires OMB approval to collect information from the public. The agency is requesting approval to collect external stakeholder information in the form of formal and informal interviews and an online, electronic survey. Both collections will relate specifically to acquisitions and contracts for incident support, such as wildfire and natural disaster procurements, with the goal of determining the acquisition method which is in the best interest of the Federal government, imposes a reasonable risk on the contractor, yet also motivates effective contractor performance.

The survey and interviews will be performed and analyzed by the Forest Service Acquisition Management Fire Equipment, Services, and Supplies Acquisition Analysis (FESSAA) Team. The information will be used as a component of the overall analysis to help verify if changes are necessary to the agency practices and procedures. Results from the information collection may be shared with other Forest Service divisions, with agencies outside the Forest Service, and with the public.

The authorization to survey stakeholders comes from Executive Order 12862, issued September 11, 1993, which directs Federal agencies to change the way they do business, to reform their management practices, and to provide service to the public that matches or exceeds the best service available in the private sector. This collection and its review will provide the Forest Service with the necessary information to meet the terms of the Executive Order.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Internal and external stakeholders including customers, other agency personnel, industry representatives, contractor associations, and individual contractors.

Estimated Annual Number of Respondents: 600.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 21, 2010.

Barbara L. Cooper,

Acting Deputy Associate Chief, Business Operations.

[FR Doc. 2010–32474 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell Ranger District; Alaska; Wrangell Island Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for the Wrangell Island Project located on Wrangell Island, part of the Wrangell Ranger District of the Tongass National Forest. This proposal is a multi-year stewardship opportunity involving a variety of timber harvest, road construction, and forest restoration and enhancement activities. The proposed project will use the contracting opportunities (timber sales and stewardship contracts) available to the Forest Service to implement the decision.

DATES: Comments concerning the scope of the analysis must be received by January 26, 2011. The draft environmental impact statement is expected in September 2011 and the final environmental impact statement is expected in January 2012.

ADDRESSES: Send written comments to: SWCA, 317 Forest Park Drive, Ketchikan, AK 99901, *Attn:* Wrangell Island Project EIS. Comments may be hand-delivered to the Wrangell Ranger District, 525 Bennett Drive, Wrangell, AK 99929, *Attn:* Wrangell Island Project EIS. Comments may also be sent via webform to: *http://www.wrangellislandprojecteis.com/comment,* or via facsimile to 907–279–7944, *Attn:* Wrangell Island Project EIS. In all correspondence, please include your name, address, and organization name if you are commenting as a representative of an organization.

FOR FURTHER INFORMATION CONTACT: Tim Piazza, Team Leader, Federal Building, Ketchikan, AK 99901, (907) 228–6318 or Austin O'Brien, Wrangell Ranger District, P.O. Box 51, Wrangell, AK 99929, (907) 874–2323. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Wrangell Island Project is to implement the Forest Plan, aligned with the Tongass National Forest transition strategy and the United States Department of Agriculture (USDA) Strategic Plan FY 2010–2015. In the USDA Strategic Plan, key priorities and desired outcomes such as the goals of rural prosperity, and preservation and maintenance of forests are identified, as well as means and strategies to achieve them. This project will help to provide an economically viable, reliable, long-term supply of timber that will support jobs for the communities of Southeast Alaska and facilitate the transition to a sustainable forest industry based on young-growth management. Forest restoration and enhancement activities on Wrangell Island will be included to further accomplish the goals of the Strategic Plan.

Proposed Action

The Forest Service is proposing a multi-year stewardship project involving a variety of timber harvest, road construction, and forest restoration and enhancement activities. The proposed action would harvest timber from up to 7,489 acres of forested land using various sizes of timber sales, offered over a period of years, within the roaded land base on Wrangell Island. Up to 21 miles of National Forest System road would be constructed and about 12 miles of existing road would be reconstructed. Preliminary analysis shows that up to an estimated 91 million board feet of sawtimber and utility wood could be made available to industry for harvest. Existing log transfer facilities will be used as needed.

Harvest would include helicopter, ground based, and cable-yarding systems and include even-aged and uneven-aged harvest prescriptions to achieve stand objectives. All proposed activities would meet the standards and guidelines of the Tongass Forest Plan.

In conjunction with proposed timber harvest, restoration and stewardship opportunities could include roads and transportation activities (for example, repairing "red pipes" or bridges, erosion control, vegetation removal, or road relocation); recreation activities (for example, campground and trails improvements, picnic sites, or vegetation management); and wildlife and fisheries habitat improvement projects (for example, beach fringe thinning, or placement of large woody debris in streams).

Possible Alternatives

The proposed action includes an estimated harvest of up to 91 million board feet from up to 7,489 acres within the roaded land base on Wrangell Island. Scoping comments will be used by the Forest Service to develop a range of alternatives in response to significant issues. A no-action alternative will be analyzed.

Responsible Official

The responsible official for the decision on this project is the Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska, 99901.

Nature of Decision To Be Made

The responsible official will decide whether or not to authorize forest restoration and enhancement activities, timber harvest, and associated road construction on Wrangell Island.

Preliminary Issues

Preliminary potential issues which may be analyzed in the EIS include the potential effects of the project on the timber supply, supporting the timber industry through the transition from old-growth harvest to young-growth management, road management, economic and rural stability, subsistence, and inventoried roadless areas.

Permits or Licenses Required

U.S. Environmental Protection Agency:

- Review Spill Prevention Control and Countermeasure Plan. State of Alaska, Department of Environmental Conservation:
- Certification of Compliance with Alaska Water Quality Standards (401 Certification);
- Storm water discharge permit/National Pollutant Discharge Elimination System review under Section 402 of the Clean Water Act (402);
- Solid Waste Disposal Permit. State of Alaska, Department of Natural Resources (DNR):
- Authorization for occupancy and use of tidelands and submerged lands.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A scoping document has been posted on the Tongass National Forest public Web site at *http://www.fs.fed.us/r10/tongass/projects/projects.shtml.* and a scoping letter will be mailed out in late December. Individuals who want to be on the project mailing list should contact the Wrangell Ranger District at the address above. The scoping package will be available at future public open

house meetings planned to be held in Wrangell, Alaska and Petersburg, Alaska in January 2011. These meetings will be announced in local newspapers and on local radio stations.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 16, 2010.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–32416 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee will meet in Elkins, West Virginia. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is for the committee to consider new project proposals.

DATES: The meeting will be held on December 8, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Monongahela National Forest Supervisor's Office, 200 Sycamore Street, Elkins, WV 26241. Written comments should be sent to Kate Goodrich-Arling at the same address. Comments may also be sent via e-mail to *kgoodricharling@fs.fed.us,* or via facsimile to 304–637–0582.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich-Arling, RAC coordinator, USDA, Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241; (304) 636–1800; E-mail *kgoodricharling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review and approval or amendment of notes from previous meeting (2) Consider new project proposals; and (3) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: November 8, 2010.

Clyde N. Thompson,

Designated Federal Officer.

[FR Doc. 2010–32403 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday, January 5, 2011 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: January 5, 2011.

ADDRESSES: Forest Supervisor's Office, 31374 US Hwy 2, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *jturk@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda will include planning for future RAC priorities. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: December 16, 2010.

Paul Bradford,

Forest Supervisor.

[FR Doc. 2010–32442 Filed 12–23–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Teacher-At-Sea Alumni Survey.

OMB Control Number: 0648–0600.

Form Number(s): NA.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 60.

Average Hours per Response: 30 minutes.

Burden Hours: 30.

Needs and Uses: Consistent with the support for research and education under the National Marine Sanctuaries Act (16 U.S.C. 32 § 1440) and other coastal and marine protection legislation, the National Oceanic and Atmospheric Administration (NOAA) provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to three weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. In order to better serve the participants, the Teacher-at-Sea Program will survey the teacher participants on their experience before, during, and after they return from sea.

Affected Public: Individuals or households.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: December 20, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–32364 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor—Standing Metal—Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of Time Limit for Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On September 14, 2010, the Department of Commerce (the Department) published the preliminary results of its 2008–2009 administrative review of the antidumping duty order of floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 75 FR 55754 (September 14, 2010). The current deadline for the final results of this review is January 12, 2011.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results of this administrative review within 120 days after the date on which the preliminary results were published in the **Federal Register.** However, if it is not practicable to complete the review within this time period, the Department may extend the time period to issue the final results. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

The Department finds that it is not practicable to complete this review within the original time frame. In order to fully evaluate the issues raised by all interested parties concerning the proper source of financial ratios, the correct method for calculating labor rates and other case issues, we are extending the time frame for completion of this review. Consequently, in accordance with section 751(2)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time period for issuing the final results of review by 60 days. Therefore, the final results will be due no later than March 13, 2011. As March 13, 2011 falls on a Sunday, our final results will be issued no later than Monday March 14, 2011.

This notice is published in accordance with section 771(i) of the Act.

Dated: December 20, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32469 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor—Standing Metal—Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of Time Limit for Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On September 14, 2010, the Department of Commerce (the Department) published the preliminary results of its 2007–2008 administrative review of the antidumping duty order of floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 75 FR 55759 (September 14, 2010). The current deadline for the final results of this review is January 12, 2011.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results of this administrative review within 120 days after the date on which the preliminary results were published in the **Federal Register.** However, if it is not practicable to complete the review within this time period, the Department may extend the time period to issue the final results. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

The Department finds that it is not practicable to complete this review within the original time frame. In order to fully evaluate the issues raised by all interested parties concerning the proper source of financial ratios, the correct method for calculating labor rates and other case issues, we are extending the time frame for completion of this review. Consequently, in accordance with section 751(2)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time period for issuing the final results of review by 60 days. Therefore, the final results will be due no later than March 13, 2011. As March 13, 2011 falls on a Sunday, our final results will be issued no later than Monday March 14, 2011.

This notice is published in accordance with section 771(i) of the Act.

Dated: December 20, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–32471 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2009, the Department of Commerce (the Department) published the preliminary results of the thirteenth administrative

review for the antidumping duty order on certain pasta from Italy. The review covers two manufacturers/exporters: Pastificio Lucio Garofalo (Garofalo) and Pastificio Attilio Mastromauro-Pasta Granoro S.r.L. (Granoro). The period of review (POR) is July 1, 2008, through June 30, 2009. Granoro and Garofalo were selected as mandatory respondents.[1]

As a result of our analysis of the comments received, the final results differ from the preliminary results for Granoro and Garofalo. The final weighted-average dumping margins for these companies are listed below in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Victoria Cho (Garofalo) and Jolanta Lawska (Granoro), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5075 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2010, the Department published the preliminary results of the thirteenth administrative review of the antidumping duty order on certain pasta from Italy. *See Certain Pasta From Italy: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 49907 (August 16, 2010) (*Preliminary Results*).

Garofalo and Granoro submitted case briefs on September 15, 2010. Petitioners[2] submitted rebuttal briefs on September 20, 2010.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009). The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum,* dated concurrent with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum,* is attached to this notice as an Appendix. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/,* and is on file in the Central Records Unit, main Commerce Building, Room 7046. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Garofalo

Regarding Garofalo, based on our analysis of the comments received, we made the following changes in calculating the dumping margin: (1) We relied on the revised and corrected charts and graphs submitted by Garofalo in conducting our quarterly cost linkage analysis and determined that application of the Department's quarterly costing methodology was not warranted, and, as a result, changed the finding made in the *Preliminary Results;* (2) we increased Garofalo's cost of manufacturing (COM) to account for the unreconciled difference between the COM from its normal books and records and the reported COM; and, (3) we used the reported allocation methodology to distribute other losses between fixed overhead and general and administrative expenses (G&A) which Garofalo excluded from the reported costs. *See Issues and Decision Memorandum* at Comment 1. For further details on how these changes were applied in the calculation, *see* Memorandum from Angie Sepúlveda, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results-Pastificio Lucio Garofalo S.p.A.," dated December 14, 2010 (Garofalo Cost Calculation Memo).

Granoro

Regarding Granoro, for the final results we increased the denominator of the G&A and financial expense ratios by the amount of the expenses for testing of pasta recorded in the 2008 audited financial statements. *See Issues and Decision Memorandum* at Comment 4. For further details on how these changes were applied in the calculation, *see* Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Pastificio Attilio Mastromauro—Pasta Granoro S.r.L." dated December 14, 2010 (Granoro Cost Calculation Memo).

Final Results of Review

We determine that the following weighted-average margins exist for the period July 8, 2008, through June 30, 2009:

Manufacturer/exporter	Margin (percent)
Garofalo	3.61
Granoro	0.80

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department

[1] As a result of withdrawals of request for review, we rescinded this review, in part with respect to Domenico Paone fu Erasmo, S.p.A. (Erasmo), Pasta Lensi S.r.L. (Lensi), Industria Alimentare Colavita, S.p.A. (Indalco), PAM S.p.A. (PAM), and Fasolino Foods Company, Inc. and its affiliate Euro-American Foods Group Inc. (Fasolino/Euro-American Foods). *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 10464 (March 8, 2010).

[2] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) If the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 15.45 percent, the all-others rate established in the Section 129 determination. *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 14, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: *Use of Quarterly Cost Methodology for Garofalo*

Comment 2: *Whether the Department Should Include Transportation Recovery in the U.S. Sales Calculation*

Comment 3: *Whether the Department Should Modify its Liquidation Instructions to U.S. Customs and Border Protection*

Comment 4: *General and Administrative and Financial Expense Ratios*

[FR Doc. 2010–32473 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of the Full Second Five-Year ("Sunset") Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce ("the Department") initiated its second sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Italy, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department is conducting a full sunset review of the order pursuant to 751(c) of the Act and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order on stainless steel sheet and strip in coils from Italy would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: David Cordell or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0408, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published the notice of initiation of the sunset review of the antidumping duty order on stainless steel sheet and strip ("SSSS") in coils from Italy, pursuant to

section 751(c) the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 30777 (June 2, 2010) ("*Notice of Initiation*").

The Department received a notice of intent to participate in the sunset review of the antidumping duty order on SSSS in coils from Italy from the following petitioners: AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union; United Auto Workers Local 3303; and United Auto Workers Local 4104 (collectively, "petitioners" or "domestic interested parties") within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under section 771(9)(C) and (D) of the Act stating that its individual members are each producers in the United States of a domestic like product or certified unions representing workers in the domestic industry producing subject merchandise.

The Department received a substantive response to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received a timely substantive response from respondent interested party ThyssenKrupp Acciai Speciali Terni S.P.A. ("TKAST") within the applicable deadline specified in 19 CFR 351.218(d)(3)(i).[1]

On July 6, 2010, the Department received a request from domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive responses submitted by the respondent. Pursuant to 19 CFR 351.302(b), domestic interested parties and the respondent were granted an extension to file rebuttal comments to the substantive responses until July 9, 2010. On July 9, 2010, the Department received rebuttal comments to the substantive responses from the domestic interested parties and the respondent.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume (or value basis, 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 July 22, 2010, the Department determined that domestic interested parties' and TKAST's responses constituted adequate responses to the notice of initiation. In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order and notified the International Trade Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

On September 23, 2010, the Department extended the deadlines for both the preliminary and final results of this review by 90 days. *See Certain Stainless Steel Sheet and Strip in Coils from Italy and Mexico: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Reviews of Antidumping Duty Orders,* 75 FR 57899 (September 23, 2010).

Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, 7220.90.00.80.

Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive. Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm, and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d). Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors. Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202

[1] Domestic interested parties and the respondent filed substantive responses on July 2, 2010.

grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length. Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36".[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17".[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6] Also excluded from the order is a permanent magnet iron-chromium-cobalt stainless steel strip containing, by weight, 13 percent chromium, 6 percent cobalt, 71 percent iron, 6 percent nickel and 4 percent molybdenum. The product is supplied in widths up to 1.27 cm (12.7 mm), inclusive, with a thickness between 45 and 75 microns, inclusive. This product exhibits magnetic remanence between 400 and 780 nWb, and coercivity of between 60 and 100 oersteds. This product is currently supplied under the trade name "SemiVac 90."

Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of the Full Five-Year ("Sunset") Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Italy" from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration ("Decision Memorandum"), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on SSSS in coils from Italy would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Manufacturers/Exporters/Producers	Weighted-Average margin (percent)
TKAST	2.11
All Others	2.11

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.310(d)(1), any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs, in accordance with 19 CFR 351.309(d). Interested parties may submit case briefs no later than 50 days after the date of publication of these preliminary results of review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case brief, unless the Secretary alters this time limit. 19 CFR 351.309(d). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than April 28, 2011.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32476 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium: Preliminary Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce ("the Department") initiated the second sunset review of the countervailing duty ("CVD") order on certain stainless steel plate in coils from Belgium ("subject merchandise") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and adequate substantive responses from ArcelorMittal Stainless Belgium N.V. ("AMS") and the Government of Belgium ("GOB"), the Department determined to conduct a full sunset review of the CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminarily finds that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or David Neubacher, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0238 or (202) 482–5823.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department initiated the second sunset review of the CVD order on stainless steel plate in coils ("SSPC") from Belgium in accordance with section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 30777 (June 2, 2010).

Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate on behalf of Allegheny Ludlum Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners"). The submitters claimed interested party status under sections 771(9)(C) and (D) of the Act, as a manufacturer of a domestic like product and as a certified union representing workers in the domestic industry producing certain SSPC, respectively. The Department received a substantive response from Petitioners within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received substantive responses in a timely manner from the following respondent interested parties: AMS and the GOB (collectively, "Respondents"). Timely rebuttal comments were received from Petitioners and Respondents on July 9, 2010. On July 22, 2010, after analyzing the submissions and rebuttals from interested parties and finding the substantive responses adequate, the Department determined to conduct a full sunset review. *See* Memorandum from Yasmin Nair, International Trade Compliance Analyst, to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, entitled "Adequacy Determination in Countervailing Duty Sunset Review of Certain Stainless Steel Plate in Coils from Belgium," dated July 22, 2010.

On September 24, 2010, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this sunset review until no later than December 20, 2010, as permitted by section 751(c)(5)(B) of the Act. *See Stainless Steel Plate in Coils from Belgium: Extension of Time Limits for Preliminary and Final Results of Full Five-Year ("Sunset") Review of Countervailing Duty Order,* 75 FR 58351 (September 24, 2010).

On November 23, 2010, the GOB, at the request of the Department, placed on the record a verification report from the CVD investigation of SSPC from Belgium, which the GOB cited in its substantive response. *See* GOB's November 23, 2010, submission.

Scope of the Order

The products covered by the order are imports of certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm[1] or more in

[1] On May 11, 2007, the Department received a scope inquiry request from U&A Belgium regarding whether the scope of the orders on SSPC from Belgium excludes stainless steel products with an actual thickness less than 4.75mm, regardless of its nominal thickness. The Department conducted a scope inquiry applicable to all countries subject to the SSPC antidumping and CVD orders. In the Department's scope ruling, dated December 3, 2008, the Department determined that SSPC with a nominal thickness of 4.75mm, but with an actual thickness less than 4.75mm, and within the dimensional tolerances for this thickness of plate, is included in the scope of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, the Republic of Korea, and Taiwan and CVD orders on SSPC from Belgium and South Africa. *See* Memorandum from Melissa G. Skinner to Stephen J. Claeys, entitled "Stainless Steel Plate in Coils from Belgium: Final Scope Ruling," dated December 3, 2008.

thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.06, 7219.12.00.20, 7219.12.00.21, 7219.12.00.25, 7219.12.00.26, 7219.12.00.50, 7219.12.00.51, 7219.12.00.55, 7219.12.00.56, 7219.12.00.65, 7219.12.00.66, 7219.12.00.70, 7219.12.00.71, 7219.12.00.80, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of the order remains dispositive.

Analysis of the Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find this public memorandum in the Central Records Unit, Room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the CVD order will lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is zero percent for AMS and all other companies.

Interested parties may submit case briefs no later than 50 days after the date of publication of these preliminary results, in accordance with 19 CFR 351.309(c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d). A hearing, if requested, will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than 330 days after the date of publication of the notice of initiation (*i.e.,* by April 28, 2011) in accordance with 19 CFR 351.218(f)(3).

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32495 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916]

Laminated Woven Sacks From the People's Republic of China: Preliminary Results of the Second Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is currently conducting an administrative review of the antidumping duty order on laminated woven sacks ("LWS") from the People's Republic of China ("PRC") covering the period August 1, 2009, through July 31, 2010. This review covers imports of subject merchandise from one manufacturer/exporter: Zibo Aifudi Plastic Packaging Co., Ltd. ("Aifudi"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries in accordance with these results. We invite interested parties to comment on these preliminary review results and will issue the final review results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Jamie Blair-Walker, 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) 482–2615.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2008, the Department published in the **Federal Register** the antidumping duty order on LWS from the PRC. *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China,* 73 FR 45941 (August 7, 2008).

On August 26, 2010 and August 31, 2010, respectively, Aifudi and Petitioners [1] submitted a timely request for an administrative review. On September 29, 2010, in response to Aifudi's and Petitioners' requests and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.213(b), the Department initiated the second administrative review of LWS from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076, 60081 (September 29, 2010) ("*Initiation Notice*").

On October 6, 2010, the Department issued its standard non-market economy ("NME") questionnaire to Aifudi.[2] Aifudi did not submit a response to the questionnaire. On November 3, 2010, Aifudi submitted a letter to the Department notifying the Department of its intent to withdraw and its refusal to further participate in this instant administrative review.[3]

Period of Review

The period of review ("POR") is August 1, 2009, through July 31, 2010.

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[1] Petitioners are the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation.

[2] The original deadlines for the NME questionnaire were October 27, 2010 for the Section A response and November 12, 2010 for the Section C & D responses.

[3] *See* Letter from Aifudi entitled Laminated Woven Sacks from China; Withdrawal from Proceeding, dated November 3, 2010.

Scope of the Order

The merchandise covered by the order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;[4] printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[4] "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 71 FR 7013 (February 10, 2006). None of the parties to this proceeding have contested such treatment.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.,* a PRC-wide rate).

As Aifudi did not submit any information on the record regarding its status, we preliminarily determine that Aifudi has not demonstrated its eligibility for separate-rate status in this administrative review. Since Aifudi failed to provide information requested by the Department that is necessary to analyze whether it qualified for a separate rate, Aifudi has failed to rebut the presumption of PRC government control. Therefore, we have preliminarily determined that Aifudi does not qualify for a separate rate, but rather should be treated as part of the PRC-wide entity.

Use of Facts Available and Adverse Facts Available ("AFA")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) Necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Adverse Facts Available to the PRC-Wide Entity

In the *Initiation Notice,* the Department stated that "If the above named company does not qualify for a separate rate, all other exporters of laminated woven sacks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part." *See Initiation Notice,* 75 FR at 60081. As noted above, Aifudi, for which this review was initiated, has not qualified for a separate rate. As a result, the PRC-wide entity is now under review.[5]

The company that we are treating as part of the PRC-wide entity, Aifudi, did not respond to the Department's antidumping duty questionnaire. Thus, we preliminarily determine that this company withheld information requested by the Department. Furthermore, this company's refusal to participate in the review significantly impeded the proceeding and prevented the Department from determining its dumping margin.

[5] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 75 FR 5952, 5959 (February 5, 2010).

Thus, pursuant to section 776(a)(2)(A) and (C) of the Act (withholds requested information and significantly impedes a proceeding), the Department has preliminarily based the dumping margin of the PRC-wide entity on the facts otherwise available on the record. Furthermore, the company's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown. *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) where the Court of Appeals for the Federal Circuit ("Federal Circuit") provided an explanation of the "failure to act to the best of its ability" standard, noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.,* information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown"). Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

AFA Rate for the PRC-Wide Entity

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[6] Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (if the rate is based on secondary information).[7] The Court of International Trade and the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[8] Therefore, as AFA, the Department has preliminarily assigned the PRC-wide entity a dumping margin of 91.73 percent. This margin, which is the PRC-wide rate from the final determination of the investigation of LWS from the PRC, is the highest dumping margin on the record of any segment of this proceeding.[9]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. As described in the *SAA,* it is the Department's practice to use secondary information from the petition, the final determination, or any previous review under section 751 of the Act concerning the subject merchandise. *See SAA* at 870. The Department will satisfy itself that the secondary information has probative value and, to the extent practicable, will examine the reliability and relevance of the information to be used.

The AFA rate being assigned to the PRC-wide entity (91.73 percent) is the highest rate assigned in any segment of this proceeding. *See LTFV Final Determination,* 73 FR at 35648. Furthermore, no information has been presented in the current review that calls into question the reliability of this information. We note that this is the highest rate from any segment of the proceeding and the rate is less than four years old. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

Pursuant to section 776(c) of the Act, the Department corroborated the petition rate of 91.73 percent in the investigation by comparing the petition margin to the individual CONNUM margins calculated for Aifudi in the investigation. *See* Memorandum to the File from Jamie Blair-Walker regarding Corroboration of the Petition Rate, dated December 6, 2010 (placing on the record of this administrative review the Memorandum to the File from Javier Barrientos, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Analysis of Zibo Aifudi Plastic packaging Co., Ltd., for the Final Determination, dated June 16, 2008). We found that since the petition margin of 91.73 percent was within the range of Aifudi's calculated CONNUM margins, the margin of 91.73 percent has probative value. As no company cooperated in this segment of the proceeding, we have no new calculated margins with which to further evaluate the 91.73 percent margin applied to the PRC-wide entity in the investigation. Accordingly, in light of the corroboration of this margin

[6] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) and the *Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 (1994) ("*SAA*") at 870.

[7] *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd., a.k.a. Fujian Wonder Pacific Inc., et al.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (Ct. Int'l Trade 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

[8] *See e.g., NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading International* v. *United States,* 24 CIT 678, 683–84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[9] *See Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 35646 (June 24, 2008) ("*LTFV Final Determination*").

in the investigation, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate has relevance.

As the 91.73 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 91.73 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.,* that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from the PRC-wide entity.

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period August 1, 2009, through July 31, 2010:

LAMINATED WOVEN SACKS FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
PRC-Wide Entity [10] ...	91.73

Public Comment

The Department will disclose to parties of this proceeding the information utilized in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and (d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 91.73 percent; and (3) the cash deposit rate for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[10] Because the mandatory respondent, Zibo Aifudi Plastic Packaging Co., Ltd., did not qualify for a separate rate, we have treated this company as part of the PRC-wide entity.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of the Five-Year ("Sunset") Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce ("the Department") initiated the second sunset review of the antidumping duty order on stainless steel sheet and strip ("SSSS") in coils from Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").

On the basis of the notice of intent to participate, and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order on SSSS in coils from Mexico, pursuant to section 751(e)(3)(B) of the Act and 19 CFR 351.218(e)(2)(i).

As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order with respect to SSSS in coils from Mexico would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Preliminary Results of Review."

FOR FURTHER INFORMATION CONTACT: David Cordell or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0408 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published the notice of initiation of the second sunset review of the antidumping duty order on SSSS in coils from Mexico, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 30777 (June 2, 2010) ("*Notice of Initiation*").

The Department received a notice of intent to participate from the AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union; United Autoworkers ("UAW") Local 3303; and UAW Local 4104 ("domestic interested parties" or "petitioners") within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under sections 771(9)(C) and (D) of the Act stating that its individual members are each producers in the United States of a domestic like product or certified unions representing workers in the domestic industry producing subject merchandise.

The Department received substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received a substantive response from respondent interested parties, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively, "respondent" or "Mexinox"), within the applicable deadline specified in 19 CFR 351.218(d)(3)(i).[1]

On July 6, 2010, the Department received a request from domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive response. Pursuant to 19 CFR 351.302(b), domestic and respondent parties were granted an extension to file rebuttal comments to the substantive responses until July 9, 2010. On July 9, 2010, the Department received rebuttal comments to the substantive responses from the domestic interested parties and the respondent.

[1] Domestic interested and respondent parties filed substantive responses on July 2, 2010.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value basis, 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 July 22, 2010, the Department determined that Mexinox's and the domestic interested parties' responses constituted adequate responses to the notice of initiation. In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order and notified the International Trade Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

On September 23, 2010, the Department extended the deadlines for both the preliminary and final results of this review by 90 days. *See Certain Stainless Steel Sheet and Strip in Coils from Italy and Mexico: Extension of Time Limits for Preliminary and Final Results of Full Five-Year ("Sunset") Reviews of Antidumping Duty Orders,* 75 FR 57899 (September 23, 2010).

Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d). Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent

and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors. Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length. Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[6] Also excluded from the order is a permanent magnet iron-chromium-cobalt stainless steel strip containing, by weight, 13 percent chromium, 6 percent cobalt, 71 percent iron, 6 percent nickel and 4 percent molybdenum. The product is supplied in widths up to 1.27 cm (12.7 mm), inclusive, with a thickness between 45 and 75 microns, inclusive. This product exhibits magnetic remanence between 400 and 780 nWb, and coercivity of between 60 and 100 oersteds. This product is currently supplied under the trade name "SemiVac 90."

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of the Full Five-Year ("Sunset") Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Mexico," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration ("Decision Memorandum"), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5," and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on SSSS in coils from Mexico is likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Mexinox—30.69 percent.
All Other's—30.69 percent.

Public Comments and Hearing

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.310(d)(1), any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs, in accordance with 19 CFR 351.309(d). Interested parties may submit case briefs no later than 50 days after the date of publication of these preliminary results of review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case brief, unless the Secretary alters this time limit. *See* 19 CFR 351.309(d). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than April 28, 2011.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32478 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Channel Islands National Marine Sanctuary Advisory Council: Commercial Fishing member and alternate, Non-consumptive recreation member and alternate, Conservation member and alternate, Research member and alternate, Public at large members (2), and Business member. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

DATES: Applications are due by January 24, 2011.

ADDRESSES: Application kits may be obtained from *http://channelislands.noaa.gov/*. Completed applications should be sent *Danielle.lipski@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Murray, *Michael.murray@noaa.gov,* 805–884–1464, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109.

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Office National Marine Sanctuaries. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the Office of National Marine Sanctuaries.

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

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: December 16, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–32370 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Recreational Diving, Oil and Gas Operations and Commercial Fishing Seats for the Flower Garden Banks National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Flower Garden Banks National Marine Sanctuary Advisory Council: Recreational Diving, Oil and Gas Operations and Commercial Fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's charter.

DATES: Applications are due by February 4, 2010.

ADDRESSES: Application kits may be obtained from Jennifer Morgan, NOAA—Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216, Galveston, TX 77551 or downloaded from the sanctuary Web site *http://flowergarden.noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Morgan, NOAA—Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216,

Galveston, TX 77551, 409–621–5151 ext. 103, *Jennifer.Morgan@noaa.gov.*

SUPPLEMENTARY INFORMATION: Located in the northwestern Gulf of Mexico, the Flower Garden Banks National Marine Sanctuary includes three separate areas, known as East Flower Garden, West Flower Garden, and Stetson Banks. The Sanctuary was designated on January 17, 1992. Stetson Bank was added to the Sanctuary in 1996. The Sanctuary Advisory Council will consist of no more than 21 members; 16 non governmental voting members and 5 governmental non-voting members. The council may serve as a forum for consultation and deliberation among its members and as a source of advice to the Sanctuary manager regarding the management of the Flower Garden Banks National Marine Sanctuary.

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 17, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–32369 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA018

60-Day Finding for a Petition To Conduct a Status Review of the Eastern North Pacific Population of Gray Whale Under the Marine Mammal Protection Act

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

ACTION: Notification of a 60-day petition finding.

SUMMARY: NMFS received a petition to conduct a status review under the Marine Mammal Protection Act (MMPA) for the purpose of designating the Eastern North Pacific stock of gray whales (*Eschrichtius robustus)* as depleted. NMFS finds that the petition does not present substantial information indicating that a status review may be warranted.

DATES: This petition finding was made on December 20, 2010.

ADDRESSES: A copy of the petition and a complete list of references cited in this notice will be available on the Internet at the following address: http://www.nmfs.noaa.gov/pr/.

FOR FURTHER INFORMATION CONTACT: Dr. Shannon Bettridge or Dr. Thomas C. Eagle, Office of Protected Resources, Silver Spring, MD, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Statutory Guidance

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", to include any case in which " * * * the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals * * * determines that a species or a population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)] * * * with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as "a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem [i.e., K] to the population level that results in maximum net productivity." Maximum net productivity level (MNPL) is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

The MMPA provides for interested parties to submit a petition to designate a population stock (hereafter "stock") of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Section 115(a)(3)(B) (16 U.S.C. 1383b(a)(3)(B)) of the MMPA requires NMFS to publish a notice in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted within 60 days of receiving a petition. NMFS and the U.S. Fish and Wildlife Service define "substantial information" under the petition procedural regulations of the Endangered Species Act as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (*see* 50 CFR 424.14(b)). Given that the identical term is used in the MMPA with reference to petitioned actions, NMFS interprets "substantial information" under MMPA using the same parameters as those used under the ESA.

Status of Gray Whales Under the Law

Gray whales were listed among several genera of baleen whales as endangered under the Endangered Species Conservation Act in June 1970, the precursor to the Endangered Species Act (ESA) (35 FR 8491, June 2, 1970). The species was subsequently listed as endangered on the List of Endangered and Threatened Wildlife and Plants (the List) under the ESA in 1973. All marine mammal species listed under the ESA are defined as "depleted" under the MMPA. NMFS completed its first status review of gray whales in 1984 and concluded that the Eastern North Pacific (ENP) stock was not in danger of extinction. That review recommended changing the status of the ENP stock of gray whales from endangered to threatened, however, no further action was taken at that time (49 FR 44774, November 9, 1984).

NMFS began a subsequent status review of gray whales and other listed species in 1990, and completed a formal report of the review and made it available to the public on June 27, 1991 (56 FR 29471). NMFS published a proposed rule to delist the ENP stock of gray whales on November 22, 1991 (56 FR 58869). On January 7, 1993, NMFS announced its final determination that the stock was no longer in danger of extinction and was not likely to become endangered in the foreseeable future, and concluded that the stock was 60 to 90 percent of K (within the accepted range of abundances for the stock's OSP) and should be removed from the List (58 FR 3121). The U.S. Fish and Wildlife Service removed the ENP stock of gray whales from the List on June 16, 1994 (59 FR 31094). As required by the ESA, NMFS conducted a status review five years after the delisting, and convened a workshop on March 16–17, 1999, in Seattle, WA. The workshop participants concluded that there was no reason to reverse the decision to remove the stock from the List. This determination was based on the continued growth of the population (at that time, increasing at 2.5 percent annually and with abundance estimates well above 20,000) and the absence of evidence of any imminent threats to the stock. As recommended by the workshop

participants, NMFS has continued to conduct assessments of the stock.

On March 28, 2001, NMFS received a petition to list the ENP stock of gray whales as threatened or endangered under the ESA to protect the stock from substantial threats. NMFS found that the petition presented no substantial information to warrant the listing, and published its 90-day finding on June 14, 2001 (66 FR 32305).

The Current Petition

On October 21, 2010, NMFS received a petition from the California Gray Whale Coalition (Petitioners) to designate the ENP gray whales as a depleted stock under the MMPA. Pursuant to Section 115(a)(3)(A) of the MMPA, NMFS published a notice in the *Federal Register* that the petition had been received and was available for public review for a 15-day comment period (75 FR 68756). NMFS subsequently received requests by the Petitioners and others to extend the public comment period to provide interested parties additional time to review the petition, compile additional materials, and prepare comments for submission to the agency. NMFS extended the public comment period until December 8, 2010 (75 FR 70903).

Petitioners request a status review of the ENP stock of gray whales and assert " * * * that the [ENP] gray whale population is in decline sufficient to classify the stock as depleted, as defined in the MMPA, thereby requiring the preparation of a conservation plan to restore the stock to its optimum [sustainable] population."

In support of this assertion, the Petitioners cite scientific literature to present estimates of historical abundance derived from a number of approaches and suggest that current abundance is below MNPL, which is the lower bound of OSP. The Petitioners also suggest several factors that may contribute to the alleged decline that caused the stock to be possibly depleted, provide comments on information available for assessing the status of the stock and reported in marine mammal stock assessment reports (SARs), and provide an alternative model to assess the status of the stock. There were also comments in the petition on previous SARs (*e.g.,* 2008 SAR) and on agency actions other than reviewing the status of the gray whale stock (*e.g.,* incidental take authorization for an open water marine seismic survey, 75 FR 49710, August 13, 2010). The comments on these documents, on previous SARs or on documents not related to the status of ENP gray whales and responses to these comments are not included in this document because the comments are not related to the petitioned action. In this determination notice, NMFS discusses the concept of "depleted" as defined by the MMPA, evaluates the information included in the petition supporting the assertion that the ENP gray whale stock is depleted, addresses other assertions in the petition, and concludes that the petition does not present substantial information indicating that a status review of ENP gray whales may be warranted.

Status of the ENP Gray Whale Stock

The petition presents three assertions that the stock is below its OSP and, therefore, that a status review may be required. The assertions are as follows:

(1) K for ENP gray whales is higher than previously reported, and the current abundance is below 60 percent of the alternative estimate of K;

(2) A non-parametric model suggests the population increased from the late 1960s until the mid-1980s and has been decreasing since then; and

(3) Abundance estimates reported in Laake *et al.* (2009) show that abundance estimates since 2000 are below the abundance estimate from 1994 when ENP gray whales were removed from the list of endangered species.

Below, NMFS addresses each of the Petitioners' assertions suggesting a status review may be required.

Carrying capacity higher than reported: In support of their first assertion, the Petitioners attribute a quote to a document by NMFS scientists (Barlow *et al.,* 1995) that pre-exploitation (historical) abundance is generally used as the most readily available proxy for K. The citation was not included in the reference section of the petition. However, a similar statement (but not a direct quote) was contained in a petition to the U.S. Fish and Wildlife Service in 2001 by the Center for Biological Diversity to designate Alaska sea otters as depleted (*see http://alaska.fws.gov/media/sotter/Pet2.pdf*). In the 2001 petition, Barlow *et al.* (1995) was identified as a NMFS publication containing guidelines for preparation and other information related to SARs. Barlow *et al.* (1995) does not include the quoted statement; however, NMFS agrees that comparing current to pre-exploitation abundance has, indeed, been used most often in assessing the status of marine mammal stocks relative to their OSP.

Historical population levels may be the best scientific information available in the cases where it has been used to evaluate the status of marine mammal populations with respect to a stock's current OSP. The following actions used historical abundance as a proxy for K: authorizing the taking of dolphin populations in the Eastern Tropical Pacific Ocean (ETP); depletion determinations for bowhead whales, Cook Inlet beluga whales, Southern Resident and AT1 killer whales, and two stocks of dolphins in the ETP; northern fur seals; and status reviews of northern fur seals and ENP gray whales. In each of these cases historical abundance was the best available information allowing NMFS to estimate K; therefore, it was used. Use of historical abundance does not indicate that historical abundance is the only approach to estimate K.

NMFS submitted a legislative proposal to Congress in 1992, which, among other things, stated NMFS' intention to use current rather than historical K in its OSP analyses. Drafts of this proposal were made available for public review and comment. Some comments indicated that the use of current K would not provide adequate protection for marine mammal populations because human alteration of marine ecosystems could result in reduced K for the affected stocks of marine mammals, and other comments supported use of current K. In the 1992 legislative proposal, NMFS stated, "Public comments were divided over whether historic [K] (before interference by human activities) or current [K] should be used to determine K under the proposal. NMFS has determined that re-creating historical [K] is not possible in most cases and would rely on current [K], absent human exploitation, to determine OSP. NMFS is sensitive to concerns that current [K] could shrink due to a number of circumstances and lead to tolerance of ever lower numbers of marine mammals within OSP. Consequently, NMFS is proposing to factor habitat degradation into the determination of OSP. Where human-caused, correctable degradation of the marine environment has occurred, OSP levels would reflect K modified (increased) by habitat restoration efforts. If data are available, NMFS would determine K based on the long-term equilibrium population that can be supported under reasonable and proper use of the marine environment and living marine resources." NMFS reiterated this policy in 2008 and 2009 in responses to comments on the 2007 and 2008 SARs (73 FR 21111, April 18, 2008, see response to comment 32; 74 FR 19530, April 29, 2009, see response to comment 21).

More recently, Wade (2002) reported that there was sufficient information in the abundance and mortality estimates

of ENP gray whales as described below to estimate the current K and MNPL of this stock using well-documented population models to estimate key parameters in the status of the ENP gray whale stock. Wade (2002) analyzed abundance estimates from 1967/68 through 1995/96 and catch records from 1966 through 1995 to determine that the stock was within its OSP. Wade and Perryman (2002) used similar methods to Wade (2002) to update the status assessment of ENP gray whales by including abundance surveys through 2001/02 and reported catch through 2002. These updated analyses confirmed that ENP gray whales were within OSP levels. These analyses were incorporated into the marine mammal stock assessment reports when the reports were updated in 2007 (Angliss and Outlaw, 2008).

Subsequently, Laake *et al.* (2009) reanalyzed all previous abundance data using methods consistent with Wade (2002) and Wade and Perryman (2002) and incorporated abundance surveys through 2006/07 to provide a new time series of abundance estimates. Punt and Wade (2010) used methods similar to those described by Wade (2002) to analyze these updated and revised abundance estimates and incorporated catch records from 1846 through 2008 to conclude that ENP gray whales remained within their OSP. Because Punt and Wade (2010) estimated K over the time period of the abundance estimates, MNPL, and current abundance directly from the data, NMFS uses Punt and Wade (2010) as the best information available on the status of the stock and on the key parameters (K, MNPL, and current abundance of ENP gray whales). The estimate of K in Punt and Wade (2010) is consistent with NMFS' practice of using current K, corrected for human-caused degradation of the environment, in evaluating a stock relative to its OSP. Where a more direct estimate of current K is not available, the agency has used historical abundance as a proxy for K.

Even if historical abundance had been the best information available to estimate K, the petition did not present substantial information suggesting a status review is warranted. The Petitioners included two approaches to estimate historical abundance in their assertion that current abundance was below MNPL. First, the Petitioners cited Alter *et al.* (2007) to suggest that K for ENP gray whales was 96,000 gray whales and the current abundance is less than 60 percent of this estimate of K. The Petitioners did not note that the analysis in Alter *et al.* (2007) resulted in an estimate of total historical abundance which likely represents both ENP and Western North Pacific gray whale stocks. Furthermore, as NMFS has reported previously (73 FR 21111, April 18, 2008; 74 FR 19530, April 29, 2009) the methods in Alter *et al.* (2007) are subject to scientific debate and have not been accepted as supporting a depletion designation. This method relies on the use of several parameters, including mutation rates and the ratio of effective population size to census size, which are difficult to measure and which strongly influence the estimate of historic abundance. In addition, it is difficult to determine the temporal and spatial scale over which the historic abundance estimate is relevant. Alter *et al.* (2007) noted that an important question in evaluating the current status of ENP gray whales is whether K has declined over time due to changes in the environment and that, if K has declined, the stock may have reached K today. Due to these weaknesses in Alter *et al.* (2007), NMFS does not consider 96,000 as a reasonable estimate of K for ENP gray whales.

For its second approach to estimating historical abundance, the Petitioners stated that the upper 95 percent confidence limits for back calculations of historical abundance were as high as 60,000 to 70,000 whales. Because the current abundance was below 60 percent of these approximations for K, they concluded the stock was depleted. The Petitioners, however, failed to justify why using extreme tails of a probability distributions for estimates of historical abundance represented the best, or even a reasonable, proxy for examining depletion level or status relative to K. These extremes are not reasonable estimates of K and are not a substantial indication that a status review is warranted. In addition, Punt and Wade (2010) considered 70,000 as the upper extreme in their starting point as an estimate of K (*i.e.,* the upper limit of the prior distribution in their analysis); however, after using the data to inform the analysis, Punt and Wade (2010) estimated K as 25,808 (posterior mean).

Nonparametric model: The Petitioners' second major argument supporting their assertion that the ENP gray whale stock is depleted is illustrated by Figure 1 in the petition. This figure shows current and previous point estimates of abundance from Laake *et al.* (2009) with lines generated by a nonparametric smoothing function superimposed over the estimates. The petition states that this nonparametric approach uses the data to determine the underlying linear or nonlinear trend without having to assume any specific functional form and concludes that the figure shows the population increased from the 1960s until then mid 1980s and has been decreasing steadily ever since.

There are two major weaknesses with the Petitioners' analysis as evidence that the ENP gray whale stock is below its OSP. First, their model was fit to point estimates of abundance only, despite abundance estimates being subject to considerable uncertainty as a result of statistical inference from statistical analysis of observational data. Ignoring important uncertainties has the potential to bias results. Second, this nonparametric approach is an inappropriate test to evaluate the status of marine mammal populations because it ignores key concepts in population biology that are critical to understanding stock status under the MMPA, such as net productivity rate, MNPL, and K.

Even if the simple smoothing function included in the petition was an adequate method to evaluate the status of the ENP gray whale stock, the information included in their presentation of this alternative model is insufficient to support the Petitioners' assertion that the ENP gray whale stock is depleted. The maximum population abundance illustrated in the Petitioners' line fitted to the current time series of abundance estimates appears to be about 23,000 gray whales in about 1985. The smoothing function shows the latest abundance (in about 2006) to be about 17,000 gray whales. If the maximum value actually represented K, the 2006 abundance would be about 73 percent of K, far above the usually-accepted criterion for OSP: 60 percent of K. Thus, using the petition's own model, the stock would be within its OSP.

Because the alternative model included in the petition did not show that the ENP gray whale stock had declined below MNPL and due to the two weaknesses described above, this alternative model is not reasonable evidence that the abundance of the stock may be below OSP.

In contrast, Punt and Wade (2010) used an age- and sex-structured population dynamics model, which estimated key parameters in the status of ENP gray whales and incorporated uncertainty from input parameters and data. A catastrophic mortality event in Punt's and Wade's (2010) analysis incorporated an analysis of the impact of the elevated strandings observed in 1999 and 2000 and was, therefore, an improvement over more standard population assessment models.

Abundance below 1994 levels: The final argument supporting the petition's

assertion that the ENP gray whale stock is depleted includes a statement that abundance estimates since 2000 are lower than in 1994 when the stock was removed from the list of endangered species (calculated by Laake *et al.* (2009) as 19,126 and 20,103 respectively). The petition notes that the mean abundance level over the interval 1967 through 2006 in Laake *et al.* (2009) is below the 1994 level and also below 60 percent of K when K is 60,000 to 70,000.

These statements are unrelated to assessing the status of ENP gray whales under the MMPA. In the MMPA the definition of "depleted" includes that the abundance is below the MNPL. The definition does not refer to the abundance when the stock was removed from the list of endangered species. That is, the MMPA requires only an evaluation whether a stock is above or below its MNPL in a status review. Accordingly, this final argument in the petition adds no credible support to the petition's assertion that the ENP gray whale stock is depleted. The best available scientific information (Punt and Wade, 2010) shows that the ENP gray whale stock is above its MNPL.

Additional Points in the Petition

Causes of Decline

The Petitioners present a model illustrating that this stock has been declining since 1985, and assert that the causes of decline include "PBR has resulted in over-harvesting", collapse of cow/calf numbers, predation by transient killer whales, and changes or reductions in prey availability. Although these causes of decline may have relevance to a status review under the MMPA if the abundance of the stock were below the MNPL, the current abundance of the ENP gray whale stock is above the MNPL. However, each of these causes of decline is addressed below.

Inflated PBR: The Petitioners suggest that PBR for the stock (set at 417 per year in the 2008 SAR) is too high, and the established quota has resulted in over-hunting, presumably from the aboriginal subsistence hunt that represents the only catches of gray whales since the PBR approach was implemented. The petition's evidence for this assertion is that the 2002 SAR did not contain revised abundance estimates reported in Laake *et al.* (2009), and that a PBR calculated with a recovery factor of 0.1 would have resulted in a lower PBR that the one reported in 2002, which used a recovery factor of 1.0.

The assertion that PBR caused the stock to be in decline cannot be substantiated by the petition because the petition contained no credible evidence that the stock had declined or was below OSP. PBR is one of many methods to estimate a sustainable level of removals of individuals from a marine mammal stock and is required by the MMPA. The calculation could not cause a decline even if a decline had occurred. Furthermore, the 2002 SAR could not be expected to include an analysis that became available in 2009. Finally, the PBR is not used to establish the aboriginal catch limit for ENP gray whales and, therefore, could not result in a subsistence quota for ENP gray whales. This catch limit is established by the International Whaling Commission (IWC) and is based on a recommendation by the IWC's Scientific Committee following analysis using the Strike Limit Algorithm (SLA), a model that is more sophisticated than the model used as the basis for PBR. The SLA and the data analyzed in establishing the aboriginal subsistence quote were scrutinized by the Scientific Committee and fully evaluated before their recommendation to the IWC. IWC procedures include periodic review of the dynamics of the affected large whale stocks to ensure that catch levels are sustainable; the next such review for the ENP gray whale stock is scheduled for June 2011. As a result, the Petitioners' assertion that PBR has led to over-harvesting is incorrect.

Collapse of cow/calf numbers: The petition asserts that counts of calves in the lagoons of Baja California, Mexico, demonstrate a major collapse of the stock. These counts are informative about use of the lagoon systems. However, counts within these specific lagoons (part of the breeding and calving range of ENP gray whales) do not estimate annual calf production for the stock because some unknown and variable numbers of cows with calves do not enter the lagoons, and effort for the counts reported in the petition is not systematic in all lagoons throughout the season. The best estimate of calf production for this stock is based on counts of northbound calves passing the Piedras Blancas Light Station (located near San Simeon, CA) because virtually the entire stock's calves pass within sight of land at this location. Accordingly, analyses of Piedras Blancas data indicate that the number of northbound calves is highly variable between years (Perryman *et al.,* 2010). In addition, NMFS has found that the majority of the variability in estimates can be explained by the timing of the melt of seasonal ice in the Northern Bering Sea (Perryman *et al.,* 2002a, 2002b). Although the petition correctly states that the calf counts throughout the calving range, including the north-bound migration, of ENP gray whales have been low the last four years (2007–2010), Perryman *et al.* (2010) note that the 17-year time series of estimates of northbound calves from Piedras Blancas does not support the assertion of a negative trend or "collapse" in reproduction as described by the Petitioners.

Predation by transient killer whales: The petition states that mortalities caused by predation by transient killer whales are not included in calculation of PBR, in population assessments, or in SARs. Further, the Petitioners present the results of a model that indicate the potential for killer whale predation to drive the population to extinction at 35 percent predation of annual calf production.

Calculation of PBR incorporates natural mortality, including predation by killer whales, even though PBR only includes the number of removals from human-caused mortality. Natural sources of mortality are not identified separately in SARs because the MMPA directs that the SARs account for human-caused mortality and serious injury. Because killer whale predation is a natural mortality factor, such mortality would be incorporated into the net productivity rate, which is the per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality (MMPA section 3(26)).

Also, because killer whales are a natural part of the marine ecosystem, the extent of predation is one factor affecting the K of the environment for gray whales. The petition's model output (Figure 1 in the petition) shows that gray whale abundance increased between the late 1800s and the mid-1900s but does not explain how killer whale predation was addressed during these periods of population increase. Through MNPL and K, which are used in the scientific basis for calculating PBR (the logistics model), killer whale predation is, in fact, incorporated into the PBR.

Changes or reductions in prey availability: The Petitioners cite a series of statements and documents that present observations and hypotheses regarding the potential impacts of climate change on the ENP stock of gray whales. Concentrations of feeding gray whales are now seen farther north than reported in the 1980s, and there has likely been a shift in distribution of their primary prey. Gray whales are

opportunistic feeders, and it is unclear how the changes in the Arctic environment are going to affect this stock. A loss of sea ice could help gray whales (for example, by allowing earlier access to foraging habitat) or hurt gray whales (for example, through a reduction in benthic production from differing ice-dynamics), so the effect of climate change on gray whales cannot be predicted at this time. NMFS agrees with the Petitioners' suggestions that the relationship between the changing Arctic ecosystem and the overall condition of ENP gray whales is an area that would benefit from careful study. If a future decline of gray whales is linked to climate change, a determination would need to be made about whether the causal mechanisms were natural or human-caused. However, the best available scientific information as reported by Punt and Wade (2010) shows that the ENP gray whale stock remains with its OSP.

Draft 2010 Stock Assessment Report

The petition contains comments about the draft 2010 marine mammal SAR. It states: "NMFS fails to indicate the 2006/07 survey was not an abundance estimate as required under s. 117 of the MMPA. There are no provisions in the MMPA which support using the results of Field Studies to legitimise (sic) SARs."

These statements are incorrect, and neither statement is relevant to the status of the ENP gray whale stock. The 2006/2007 survey was a full abundance estimation survey. Field and analysis methods, and raw count data, are detailed in a NOAA/AFSC Processed Report (Rugh *et al.,* 2008). Updated estimates and methodologies for this survey are presented in Laake *et al.* (2009). MMPA section 117 requires NMFS to use the best information available to prepare SARs. In the case of ENP gray whales, the best information available includes results of field studies.

The petition also states, "The results of the most recent abundance estimate, (as required under s[ection] 117 of the MMPA) undertaken in the 2009/2010 season, have not been published." This statement is correct with respect to the abundance estimate from the 2009/10 survey not being included in the SAR. The statement is incorrect in stating that MMPA section 117 requires the 2009/2010 estimate to be included. Rather, MMPA section 117 requires that SARs be prepared using the best scientific information available. Estimates from the 2009/2010 survey were not available when the draft 2010 SAR was prepared. NMFS anticipates updating the time series of abundance estimates so the more recent estimates are available in spring 2012 and would be included in the next update of the ENP gray whale SAR.

Population Collapse

The Petitioners point to the Unusual Mortality Event of 1999–2000 and assert that the agency ignored this decline in gray whale abundance. This assertion is inaccurate.

The most recent assessment of the ENP gray whale stock status (Punt and Wade, 2010) incorporated analyses that accounted explicitly for the decreased abundance caused by the 1999–2000 mortality event. Specifically, Punt and Wade showed that a model including the "catastrophic mortality event" in 1999–2000 fit the abundance data better than a "no-event" analysis. Punt and Wade (2010) estimated that 15.3 percent of the non-calf population died in each of the years in which a catastrophic mortality event occurred, compared to 2 percent in a normal year. Punt and Wade (2010) also estimated that the population fell from being about 99 percent of K in 1998 to about 83 percent in 1999 and 71 percent in 2000 and increased to about 92 percent of K in 2009. Estimates of the number of whales that died in 1999 and 2000 were approximately 3,303 (90 percent probability interval 1,235–7,988) and 2,835 (90 percent probability interval 1,162–6,389), respectively, for a total of 6,138 (2,398–14,377). Results of Punt and Wade (2010) were included in the draft 2010 SAR and are included in the current determination on the petition and status of the ENP gray whale stock.

With respect to fluctuations in population abundance, the draft 2010 SAR (Allen and Angliss, 2010) notes that ENP gray whale stock may rise and fall as the population adjusts to natural and human-caused factors affecting K of the environment and that increased susceptibility to environmental variability are likely. Allen and Angliss (2010) concluded that such year-to-year fluctuations in abundance and increased susceptibility to environmental variability are consistent with a stock approaching its K.

Migration Route Disruption

The Petitioners claim that wave energy projects along the west coast could block the migratory pathway of gray whales and have the potential to expose newborn calves born outside of the Baja lagoons to higher level of predation. Such exposure, however, has not yet occurred and, therefore, has not affected the status of the gray whale stock.

In 2007, NOAA/NMFS facilitated a workshop to assess the effects of wave energy development in the Pacific Northwest on marine habitats. An expert panel (Boehlert *et al.* 2008) considered potential risks to marine mammals, including gray whales, and concluded that mooring cable design (slack vs. taut, horizontal vs. vertical, diameter, density) is the agent or stressor most likely to affect the magnitude of cetacean entanglement incidents for large whales. The panel noted that cable design is even more critical for slack "attendant" lines attached to adjacent buoy lines, which may be used (picked up) by service vessels to secure the wave energy buoy. Similar, but smaller, "double" buoys on commercial crab pots used in waters off Oregon are the greatest present risk to gray whales from commercial fisheries, which cause mortalities and serious injuries at insignificant levels approaching a zero mortality and serious injury rate. Presently, there is a relatively high level of uncertainty and low level of scientific agreement concerning the number of energy projects, various project designs, and the potential impacts of wave energy generating devices on gray whales (and cetaceans in general). That said, offshore wave energy projects may or may not pose significant risks to gray whales. However, without more case specific technical details (*e.g.* offshore site location, buoy configuration, cable design, mooring systems), it is not possible to properly gage their potential impacts.

If the development occurs, project construction and operation will be subject to the prohibition on taking marine mammals and the exception on taking small numbers of marine mammals incidental to activities other than commercial fishing in MMPA section 101(a)(5). Before NOAA/NMFS could authorize incidental takes of these projects, the agency would have to make a finding that the action would have no more than a negligible impact on affected stocks of marine mammals.

Comments and Responses

NMFS received more than 1,400 comments on the petition. Most of these comments expressed general support for the petition or for whale conservation and did not contain substantive information; therefore, those comments are not summarized here. Several organizations, including the Marine Mammal Commission, the Makah Tribe, the Animal Welfare Institute (AWI), the Center for Biological Diversity (CBD) and the Natural Resources Defense Council (NRDC) made substantive

comments and supported the petitioned request for a status review or recommended that the petition did not contain substantial information indicating that a status review may be warranted. Summaries of key points in these substantive comments and responses to these comments are included below.

Comment 1: AWI and CBD suggested that the standard of review for the 60-day determination is whether or not the petitioned action (requesting a status review) may be warranted. The petition does not have to contain substantial information to indicate that a depleted designation is warranted.

Response: NMFS followed the requirements of MMPA section 115 to evaluate the petition. NMFS considers Punt and Wade (2010), which was based in part upon the updated analyses of Laake *et al.* (2009), as the best scientific information available regarding the status of ENP gray whales with respect to the stock's OSP. The petition did not contain any evidence to suggest that any other scientific information was a better evaluation of the status of ENP gray whales than the evaluation presented in Punt and Wade (2010). As NMFS noted above, and as recommended by the Commission (see comment 8), NMFS does not find a status review is warranted.

Comment 2: CBD and AWI noted that there are many estimates for historical abundance, and some of these estimates are higher than those considered by NMFS. It is unknown whether the "one-size-fits-all" approach of 60 percent of K is an accurate estimate for MNPL. Alter *et al.* (2007) estimate a current K for gray whales as about 90,000 based upon a simple estimate of the amount of food available for gray whales in the Bering and Chukchi Seas. AWI concluded that until a status review of ENP gray whales is completed, NMFS cannot and should not settle on an estimate of the actual K of ENP gray whale habitat.

Response: As noted in the discussion of the petition, NMFS finds that there is no need to use the highest possible extremes as reasonable estimates for historical abundance as a proxy for K. Furthermore, NMFS notes that its assessment of the status of ENP gray whale stock is not based upon a comparison of current abundance to a fixed portion (60 percent) of historical abundance as an estimate of MNPL. Rather, NMFS uses Punt and Wade (2010) as the evidence supporting a determination that the ENP gray whale stock is within its OSP and, therefore, not depleted. Punt and Wade (2010) used all available abundance estimates and catch records to estimate that MNPL for this stock is 0.656 (with a 90 percent confidence interval of 0.532 to 0.725) of K.

Although Alter *et al.* (2007) calculated that the potential food available for gray whales in the Bering and Chukchi Seas could support an estimated 90,000 whales, their estimate of food abundance is not a meaningful estimate of K for gray whales in the area. Although food abundance is one of the factors that could affect K for gray whales, many other factors affect the maximum population of gray whales supportable by their habitat. For example, gray whale abundance may be affected by access to these food resources to survive and reproduce. Perryman *et al.* (2002), which was cited in AWI's comments, showed a strong correlation between extent of sea ice and gray whale calf counts. Also, as noted in the petition and within AWI's comments, killer whales prey on gray whales and could kill a fairly high proportion of the annual calf production (the petition suggested up to 35 percent). Accordingly, the extent of killer whale predation on gray whale calves could have a substantial effect on the upper limit of ENP gray whales supportable in their environment. These are only two of many factors that must be included in a reasonable attempt to estimate of K for gray whale. Punt and Wade (2010) were able to use gray whale abundance estimates, correcting for the only substantial human-caused mortality factor, aboriginal subsistence catch, to conclude that the stock's status is within OSP.

Comment 3: AWI and CBD noted variability in the time series of ENP gray whale abundance estimates, including some years in which year-to-year increases were not biologically plausible. Without describing their methods, AWI's comments described patterns of relatively short-term population trends for the ENP gray whale stock and noted that results of the latest abundance surveys were not available. AWI suggested that because the latest abundance surveys had not produced available results yet, NMFS should issue a positive 60-day finding on the petition, noting that without disclosing this information it would be premature for NMFS to make a "not warranted" finding.

Response: NMFS is aware of the variability in the abundance data and is aware that each abundance estimate may over- or under-estimate the number of whales actually in the stock due to variability observations and in whale migration behavior and how this variability may conflict with assumptions in the underlying models. Accordingly, NMFS does not depend on year-to-year comparisons of estimates. Rather, NMFS based its determination on the status of the ENP gray whale stock on the comprehensive analysis of the entire time series of abundance and mortality estimates as initially described in Wade (2002) and updated in Punt and Wade (2010). NMFS disagrees that the lack of available information should be a justification to make a positive finding. Rather, NMFS is following the explicit direction in MMPA section 115 to base its determination "* * * solely on the basis of the best scientific information available." Results of the latest surveys remain in preparation and evaluation and are, consequently, not available.

Comment 4: AWI recommended that NMFS not rely on a simple comparison of the abundance of the ENP gray whale stock relative to its MNPL. Rather, NMFS should show some flexibility in its status assessment by considering present and future threats to the population.

Response: NMFS notes that the MMPA is explicit in its definition of depleted. The ENP gray whale stock is not listed under the ESA, and management authority for the stock has not been transferred to any state. Accordingly, the evaluation of its status becomes question of whether or not NMFS finds the stock is within or below its OSP, the lower limit of which is MNPL. Although an evaluation of the extent to which various factors may affect the status and trend of the ENP gray whale stock may facilitate some conservation decisions, such an evaluation is not necessary or even relevant to determine whether or not the stock is within its OSP.

Comment 5: The Petitioners provided comments on their own petition. In their submission they complained about the communication process and information flow with respect to the agency's receipt and public notification of the petition. They also discussed abundance estimates, threats, and potential threats to gray whales. Included with their comments was information to supplement the petition and a reiteration of some of the points contained in the petition.

Response: NMFS has fully complied with the process outlined in section 115 of the MMPA. The information provided by the Petitioners regarding abundance estimates and current and future threats is unrelated to the agency's determination of the stock's status as defined by the statute. Supplemental information provided by the Petitioners regarding 1980 and 1981 calf counts has already been incorporated into the

record (Perryman *et al.,* 2010) and does not constitute new information.

Comment 6: The NRDC pointed to differences between Alter *et al.* (2007) abundance estimates and those of NMFS scientists and argued that disagreement among scientists is reason for an in-depth review. The commenter cited ESA-related cases supporting this argument.

Response: NMFS maintains that Laake *et al.* (2009) provides the best available time series of abundance, and Punt and Wade (2010) is the best available information regarding status of the stock. Neither the petition itself nor comments on the petition provide information that supplants Punt and Wade (2010) as the best available science. No information has been provided to make the agency cast doubt on the Laake *et al.* (2009) abundance estimates and the Punt and Wade (2010) analysis and conclusion that the stock is within OSP. NMFS accepts Punt's and Wade's (2010) analysis and conclusion as supported by the best available science. Therefore, a status review is not necessary at this time.

Comment 7: The Makah Tribe provided an evaluation of the strengths and weaknesses of the petition with respect to population abundance, K, and factors that may be affecting gray whale population dynamics. They concluded that information in the petition did not supersede Laake *et al.* (2009) and Punt and Wade (2010) as the best available information. Accordingly, the Makah Tribe concluded that the petition does not present significant information indicating that the stock should be designated as depleted.

Response: NMFS concurs with the Makah Tribe's conclusions.

The Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, reviewed the petition and recommended, among other things, that NMFS defer any status review until there is stronger scientific evidence indicating that the stock is below MNPL. The Commission's comments, summarized below and based on the MMPA definition of depleted as below OSP (section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)), and NMFS regulations (50 CFR 216.3), state that determination of whether a population is depleted is based solely on the population's abundance relative to MNPL.

Comment 8: The Commission reviewed the two main approaches used to evaluate the ENP gray whale abundance with respect to its MNPL, the methods employed by Alter *et al.* and by Punt and Wade (2010), and supported the Punt and Wade approach as being more robust. The Commission noted that the question of whether climate change has reduced K for the stock is not factored in to the Punt and Wade model, and that it is too soon to form conclusions about the long-term effects on climate change on the stock. The Commission, however, concluded that a status review is not warranted at this time, and a status review would not be a good use of limited resources.

Response: NMFS agrees with the Commission's conclusions.

Comment 9: The Commission reviewed the Petitioners' claims that the agency used inappropriate abundance estimates and recovery factor to calculate PBR for the stock and that PBR has resulted in over-exploitation of gray whales. The Commission concluded that NMFS did, in fact, use proper population estimates and that a recovery factor of 1.0 was more appropriate than 0.1 as proposed by the Petitioners. Furthermore, the Commission made the important distinction that calculation of PBR does not have any effect on population; rather, actual takings affect the stock.

Response: NMFS agrees with the Commission's assessment, and a more detailed discussion of PBR is included in the discussion section above.

Comment 10: Regarding the Petitioners' assertion that recent declines in calf production indicate the stock is depleted, the Commission reiterates the requirements of the MMPA, stating that stock status be based solely on abundance relative to MNPL and reiterates that productivity is not a criterion for designation of depleted status. The Commission also notes, "When reviewing calf production and survival, it is important to look at relatively long-term patterns, as variation in these parameters over short periods (*i.e.,* a few years) can be misleading."

Response: NMFS agrees.

Comment 11: The Commission noted while the petition's focus on killer whale predation on gray whales is reasonable, the level of predation is not a criterion for designating a stock as depleted and is only relevant if predation leads a stock to decline below MNPL which does not appear to be the case. Additionally, the Commission noted that the petition does not adequately describe the predation model included therein; and, thus, it is not possible to determine the reliability of the model's results.

Response: NMFS agrees.

Comment 12: In addition to recommending that the agency not conduct a status review of ENP gray whales at this time, the Commission recommended that NMFS focus research and management efforts on continued monitoring and expanded study of the stock's natural history, and that the agency take advantage of opportunities to convene inter-agency groups to coordinate gray whale research.

Response: NMFS agrees that this approach to research would be helpful.

Comment 13: The Commission further recommended that the agency establish and fund a program to continue to monitor gray whale abundance and reproduction, and make efforts to understand the effect of climate change on the stock.

Response: Such a program would be important, and NMFS will pursue such monitoring to the extent that the budget allows.

Comment 14: In their letter to NMFS on this petition, the Commission noted that the MMPA and implementing regulations specify that a stock is to be designated as depleted only when its abundance is less than its OSP. The OSP is defined as a range, the lower limit of which is the stock's MNPL. Thus, the question to be addressed here is whether the petition presents substantial information to conclude that the ENP gray whale stock may be less than its MNPL and, therefore, warrants a status review.

Response: NMFS agrees.

Petition Finding

Earlier in this notice, NMFS states that the petition included three major assertions supporting their allegation that the ENP gray whale stock was below its MNPL. These assertions were as follows:

(1) K for ENP gray whales is higher than previously reported, and the current abundance is below 60 percent of these estimates of K;

(2) A non-parametric model suggests the population increased from the late 1960s until the mid-1980s and has been decreasing since then; and

(3) Abundance estimates reported in Laake *et al.* (2009) show that abundance estimates since 2000 are below the abundance estimate from 1994 when ENP gray whales were removed from the list of endangered species.

As discussed above (*see Status of the ENP Gray Whale Stock),* NMFS evaluated the evidence supporting these arguments and concludes that none provide substantial evidence that the ENP gray whale stock is below its MNPL. Accordingly, NMFS finds that the petition does not present substantial information indicating that the petitioned action is warranted.

In making this finding, NMFS thoroughly evaluated the information

contained in the petition and other scientific information available on the status of the ENP gray whale stock. As noted in the Commission's statement above, the pertinent analysis for assessing the status of the ENP gray whale stock is whether or not, based upon the best available scientific information, the ENP gray whale stock is above or below its MNPL. Although NMFS is denying the current petition, the analysis supporting this denial involved an assessment of the status of the stock. In this evaluation, NMFS concluded that Punt and Wade (2010) analyzed and reported the best available information assessing the status of the ENP gray whale stock.

Punt and Wade (2010) used an accepted age- and sex-structured population dynamics model and estimated key biological parameters from a long time series of data collected over a long period of time. Punt and Wade (2010) used all available information from abundance data collected since the mid-1960s to 2006 (and analyzed using consistent methods by Laake *et al.* (2009)), incorporated uncertainty from input parameters and data, and simulated key demographic parameters, thus capturing key biological processes. Punt and Wade (2010) included a catastrophic mortality event, which accommodated the elevated strandings of ENP gray whales observed in 1999 and 2000. As a result of this catastrophic mortality, which was declared and evaluated as an unusual mortality event pursuant to MMPA section 404 (16 U.S.C. 1421c), Punt and Wade (2010) estimated that the population was reduced by about 30 percent (about 15 percent annually for two years) due to the elevated mortality rates observed in 1999 and 2000. Punt and Wade (2010) also estimated that the ENP gray whale stock was currently 129 percent of the MNPL with a probability of 0.884 that the stock was within its OSP. Punt and Wade (2010) used the best and most recent information available and adequately incorporated uncertainties for model parameters. Punt and Wade (2010) may be characterized as follows: the approach and the information analyzed were subjected to internal NMFS and external peer review, and this analysis was consistent with NMFS' previously stated practice to use current K to make OSP determinations where possible. NMFS considers Punt and Wade (2010) to be the best scientific information available for evaluating the status of ENP gray whales relative to their OSP and has included the Punt and Wade (2010) analyses and conclusions in the draft 2010 marine mammal stock assessment reports in the most recently available abundance estimate in reporting the status of the stock (Allen and Angliss, 2010). Accordingly, NMFS reaffirms that the ENP stock of gray whales is above its MNPL and, therefore, within its OSP.

Dated: December 20, 2010.

David Cottingham,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–32479 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA101

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors in January 2011. The intent of this meeting is to discuss issues of relevance to the Councils, including FY 2011 budget allocations and budget planning, Annual Catch Limits (ACLs), Coastal and Marine Spatial Planning, Recreational Fishery Issues, Enforcement, Catch Shares Policy Implementation, and other topics related to implementation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The meeting will begin at 9 a.m. on Tuesday, January 11, 2011, recess at 5:30 p.m. or when business is complete; and reconvene at 8:30 a.m. on Wednesday, January 12, 2011, and adjourn by 5 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC 20001, telephone 1–800–824–5419, fax 202–638–4025.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: telephone 301–713–2337 or e-mail at *William.Chappell@noaa.gov;* or Tara Scott: telephone 301–713–2337 or e-mail at *Tara.Scott@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. NMFS will host this meeting and provide reports to the CCC for its information and discussion. All sessions are open to the public.

Proposed Agenda

January, 11, 2011

9 a.m. Morning Session Begins.
9–10:30 Welcome comments and Round Robin with Councils.
10:30–10:45 Break.
10:45–11:30 Round Robin with Councils (Continued).
11:30–12 "Managing Our Nation's Fisheries" III Planning.
12 noon–1:30 p.m. Lunch.
1:30 Afternoon Session Begins.
1:30–2:15 Performance Measures.
2:15–3:15 Budget Issues FY11:
- Status, Allocation, Council Grants.
- FY12: Update.

3:15–3:30 Break.
3:30–4:15 Budget Issues (Continued).
4:15–5:15 ACLs and Associated Science Issues.
- National Science ACL Workshop.
- Report of the 2010 National Scientific and Statistical Committees (SSC) Workshop.
- Planning for National SSC Workshop—MAFMC.
- Prioritizing Future Stock assessments to Meet MSRA Requirements.

5:15–5:30 Review of Procedure for Approval of Councils' Standard Operating Policy and Procedures.
5:30 Adjourn for the Day.

Wednesday, January 12, 2011

8:30 a.m. Morning Session Begins.
8:30–9 Communication on Ending Overfishing.
9–9:30 Recreational Fisheries Engagement Strategy.
9:30–10:30 Marine Recreational Information Program (MRIP) Re-estimation Project Update.
10:30–10:45 Break.
10:45–11:30 Coastal and Marine Spatial Planning.
11:30–1 p.m. Lunch.
1–Afternoon Session Begins.
1–2 Catch Shares Policy Implementation.

2–3 Enforcement Issues.
3–3:15 Break.
3:15–4:15 Impacts and Response to Climate Change.
4:15–4:45 May Council Coordination Committee (CCC) Agenda Planning.
4:45–5 Wrap-up.
5 p.m. Adjourn.

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tara Scott at 301–713–2337x177 at least five working days prior to the meeting.

Dated: December 20, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–32477 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment Development and Advisory Committee; Establishment and Meeting

ACTION: Announcement of Charter and Notice of Public Meeting.

SUMMARY: This Notice advises of the public of the establishment of the National Climate Assessment Development and Advisory Committee (NCADAC) and of an upcoming meeting of the NCADAC.

Date and Time: The NCADAC will meet on February 3–4, 2011 from 9 a.m. to 6 p.m.

ADDRESSES: The meeting will be held in Washington, DC—the venue to be announced on the *http://www.globalchange.gov* Web site. The public portion of the meeting may have limited seating capacity.

FOR FURTHER INFORMATION CONTACT: Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone 240–429–0512, e-mail: *Kandis.Wyatt@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule of Federal Advisory Committee Management, 41 CFR part 102–3, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the National Climate Assessment Development and Advisory Committee (NCADAC) is in the public interest, in connection with the performance of duties imposed on the Department by law. The NCADAC will consist of approximately 35 members to be appointed by the Under Secretary to assure a balanced representation among preeminent scientists, educators, and experts reflecting the full scope of the scientific issues. An additional 15 members are named to represent the federal agencies in the U.S. Global Change Research Program. The NCADAC will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of publication of this notice in the **Federal Register**.

Matters To Be Considered

During this open public meeting, the Committee will receive updates on plans for development of the First Draft of the National Climate Assessment Development and Advisory Committee's Report to Congress and the President.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone 240–429–0512, e-mail: *Kandis.Wyatt@noaa.gov.*

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact: Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone 240–429–0512, e-mail: *Kandis.Wyatt@noaa.gov*.

The NCADAC expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. The meeting will be open to public participation and will include a 30-minute public comment period on February 4, 2011 from 9 a.m. to 9:30 a.m. (please check the *http://www.globalchange.gov* Web site to confirm this time). In general, each individual or group that is not attending as a member of the FAC but wishes to make a verbal presentation will be limited to a total time of five (5) minutes. Written comments will also be accepted and 50 copies should be received by the NCADAC Designated Federal Official (DFO) by January 24, 2011 to provide sufficient time for review. Written comments received after January 24, 2011 will be distributed to the NCADAC, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone 240–429–0512, e-mail: *Kandis.Wyatt@noaa.gov.*

Kandis Y. Wyatt,

Designated Federal Officer, NCADAC.

[FR Doc. 2010–32405 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Public notice and opportunity for comment on the list of nominations received from state and territorial marine protected area programs to join the National System of Marine Protected Areas.

SUMMARY: NOAA and the Department of the Interior (DOI) invited federal, state, commonwealth, and territorial marine protected area (MPA) programs with potentially eligible existing MPAs to nominate their sites to the National System of MPAs (national system). The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, (73 FR 69608) and provides guidance for collaborative efforts among federal, state, commonwealth, territorial, tribal and local governments and stakeholders to develop an effective and well coordinated national system of MPAs that includes existing MPAs meeting national system criteria as well as new sites that may be established by

managing agencies to fill key conservation gaps in important ocean areas.

DATES: Comments on the nominations to the national system of MPAs are due February 10, 2011.

ADDRESSES: Comments should be sent to Lauren Wenzel, National Oceanic and Atmospheric Administration, National Marine Protected Areas Center, 1305 East West Highway, N/ORM, Silver Spring, MD 20910. Fax: (301) 713–3110. *E-mail: mpa.comments@noaa.gov.* Comments will be accepted in written form by mail, e-mail, or fax.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301–713–3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov.* An electronic copy of the list of nominated MPAs is available for download at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs includes member MPA sites, networks and systems established and managed by federal, state, tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. Executive Order 13158 defines an MPA as: "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." As such, MPAs in the national system include sites with a wide range of protections, including multiple use areas that manage a broad spectrum of activities and no-take reserves where all extractive uses are prohibited. Although sites in the national system may include both terrestrial and marine components, the term MPA as defined in the Framework refers only to the marine portion of a site (below the mean high tide mark).

Benefits of joining the national system of MPAs, which are expected to increase over time as the system matures, include a facilitated means to work with other MPAs in the region, and nationally on issues of common conservation concern; fostering greater public and international recognition of MPAs, MPA programs, and the resources they protect; priority in the receipt of available training and technical support, MPA partnership grants with the National Fish and Wildlife Foundation, cooperative project participation, and other support for cross-cutting needs; and the opportunity to influence federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Joining the national system does not restrict or require changes affecting the designation process for new MPAs or management and modification of existing MPAs. It does not bring state, territorial or local sites under federal authority. It does not establish new regulatory authority or interfere with the exercise of existing agency authorities. The national system is a mechanism to foster greater collaboration among participating MPA sites and programs to enhance stewardship in the marine waters of the United States.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing federal, state, commonwealth, territorial, tribal or local MPA authorities. This notice is for the fourth round of nominations to the national system. There are currently 254 federal, state and territorial MPAs within the national system.

There are four entry criteria for existing MPAs to join the national system, including one that applies only to cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.

2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).

3. Contributes to at least one priority conservation objective as listed in the Framework.

4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

The MPA Center used existing information contained in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/helpful_resources/inventory.html,* and potentially eligible sites are posted online at *http://www.mpa.gov/pdf/national-system/nominationsummary810.pdf.*

As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

List of MPAs Nominated to the National System

The following 38 MPAs have been nominated by state and territorial resource agencies to join the national system of MPAs. A list providing more detail for each site is available at *http://www.mpa.gov.*

American Samoa

Alofau Village Marine Protected Area.
Amaua and Auto Village Marine Protected Area.
Fagamalo Village Marine Protected Area.
Masausi Village Marine Protected Area.
Matuu and Faganeanea Village Marine Protected Area.
Poloa Village Marine Protected Area.
Vatia Village Marine Protected Area.

California

Point Arena State Marine Reserve.
Point Arena State Marine Conservation Area.
Sea Lion Cove State Marine Conservation Area.
Saunders Reef State Marine Conservation Area.
Del Mar Landing State Marine Reserve.
Stewarts Point State Marine Reserve.
Salt Point State Marine Conservation Area.
Gerstle Cove State Marine Reserve.
Russian River State Marine Recreational Management Area.
Russian River State Marine Conservation Area.
Bodega Head State Marine Reserve.
Bodega Head State Marine Conservation Area.
Estero Americano State Marine Recreational Management Area.
Estero de San Antonio State Marine Recreational Management Area.
Drakes Estero State Marine Conservation Area.
Estero de Limantour State Marine Reserve.
Point Reyes State Marine Reserve.

Point Reyes State Marine Conservation Area.
Duxbury State Marine Conservation Area.
Southeast Farallon Island State Marine Reserve.
Southeast Farallon Island State Marine Conservation Area.
Montara State Marine Reserve.
Pillar Point State Marine Conservation Area.
Point Reyes Special Closure.

Review and Approval

Following this public comment period, the MPA Center will forward public comments to the relevant managing entity or entities, which will reaffirm or withdraw (in writing to the MPA Center) the nomination. After final MPA Center review, mutually agreed upon MPAs will be accepted into the national system and the List of National System MPAs will be posted at *http://www.mpa.gov.*

Dated: December 17, 2010.

Juliana P. Blackwell,

Acting Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 2010–32368 Filed 12–23–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/23/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 10/1/2010 (75 FR 60739–60740), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List of Food Service Attendant, Pease Air National Guard Base, Newington, NH.

Comments on the proposed addition were received from representatives of the Blind Entrepreneurs Alliance (BEA), Randolph Sheppard Vendors of America (RSVA) and the National Association of Blind Merchants (NABM).

The Committee disputes any suggestion that all Department of Defense (DoD) contracts for mess hall services must be competitively bid and are subject to the Randolph-Sheppard Act. In this project, the DoD contracting activity specifically identified their requirement as "food attendant services." Therefore, the initial **Federal Register** Notice published by the Committee identifies the service as "Food Service Attendant" that includes "food preparation, service of food, cashiering and housekeeping services and waste management." The Committee also confirmed with the contracting activity that the dining facility is under military management and operation which, in addition to the clearly defined Statement of Work, specifically limits the requirement of this project to food service attendant duties.

The Randolph-Sheppard Act provides entrepreneurial opportunities for blind vendors in operating and managing military dining facilities, whereas food service attendant opportunities supporting the operation of a military dining facility short of management responsibilities are considered to be suitable for addition to the Procurement List maintained by the Committee. Accordingly, the Committee determines that the information provided in the **Federal Register** Notice is sufficiently clear to identify the services sought and, furthermore, that this service is appropriate for the AbilityOne Program.

After consideration of the material presented to it concerning capability of a qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Food Service Attendant, Pease Air National Guard Base, Newington, NH.

NPA: CW Resources, Inc., New Britain, CT.

Contracting Activity: Dept. of the Army, XRAW7NN USPFO Activity NH ARNG, Concord, NH.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–32330 Filed 12–23–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add a service and a product to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 1/23/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service and product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the product and service to the Government.

2. If approved, the action will result in authorizing small entities to provide the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service and product are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, USDA, APHIS, PPQ, Honolulu International Airport, 300 Rodgers Blvd, Honolulu, HI

NPA: Opportunities for the Retarded, Inc., Wahiawa, HI.

Contracting Activity: Animal and Plant Health Inspection Service, Minneapolis, MN.

Product

NSN: 6230–01–242–2016, Light Set, General Illumination.

NPA: Arkansas Lighthouse for the Blind, Little Rock, AR.

Contracting Activity: Defense Logistics Agency, Aviation, Richmond, VA.

Coverage: B–List for 50% of the Department of Defense requirement as aggregated by the Defense Logistics Agency, Aviation, Richmond, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–32331 Filed 12–23–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act: Notice of Commission Action Lifting Stay of Enforcement of Certification Requirements for Certain Non-Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission," "CPSC," or "we") is announcing its decision to lift its stay of enforcement of certain certification provisions of section 14 of the Consumer Product Safety Act ("CPSA"), as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). The Commission is taking this action with respect to non-children's products subject to CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles.

DATES: The stay of enforcement of the certification provisions of section 14 of the CPSA expires for non-children's products subject to CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles on January 26, 2011.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced that it would stay its enforcement with respect to certain testing and certification requirements in sections 14(a)(1), (a)(2), and (a)(3) of the CPSA, as amended by section 102 of the CPSIA.

In brief, sections 14(a)(1) and (a)(2) of the CPSA establish testing and certification requirements for most consumer products regulated by or under the statutes enforced by the Commission, including children's products. Section 14(a)(1) of the CPSA requires every manufacturer of a product (and the private labeler of such product if such product bears a private label) that is subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other law enforced by the Commission, and which is imported for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product, or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other law enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation applicable to the product.

For children's products, section 14(a)(2) of the CPSA states that, before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, the manufacturer (and the private labeler if the children's product bears a private label) must submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited by the Commission under section 14(a)(3) of the CPSA ("CPSC-accepted third party laboratory"). (Section 3(a)(2) of the CPSA defines "children's product," in relevant part, as "a consumer product designed or intended primarily for children 12 years of age or younger.") The CPSC-accepted third party laboratory must test the children's product for compliance with such children's product safety rule. Based on the testing, the manufacturer (or private labeler) must certify that the children's product complies with the children's product safety rule.

Section 14(a)(3) of the CPSA establishes a schedule for implementing third party testing and includes a timeline for the accreditation of third party conformity assessment bodies. Section 14(a)(3)(A) of the CPSA states that the third party testing requirement applies to any children's product manufactured more than 90 days after the Commission has established and published a "notice of requirements" for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule.

In the **Federal Register** of December 28, 2009 (74 FR 68588), the Commission revised the terms of the stay of enforcement on the CPSIA's testing and certification requirements. We announced when the stay would lift for certain testing and certification requirements and detailed how the other testing and certification requirements would be implemented or otherwise become effective. Part II.D of the December 28, 2009 notice discussed, in part, consumer products for which the Commission was continuing the stay of enforcement until further notice. We stated that, "[d]ue to factors such as pending rulemaking proceedings

affecting the product or the absence of a notice of requirements for the children's product, the Commission has decided to continue the stay of enforcement for consumer products or children's products listed below." 74 FR at 68591. We noted that the stay on CPSIA testing and certification did not extend to compliance with the applicable mandatory safety requirements; thus, the stay did not extend to guarantees under the Flammable Fabrics Act. 74 FR at 68589, 68591. The products identified in part II.D of the December 28, 2009 notice included:

- Carpets and rugs (16 CFR parts 1630 and 1631);
- Vinyl plastic film (16 CFR part 1611); and
- Wearing apparel (16 CFR part 1610).

74 FR at 68591. The Commission also explained that:

> The Commission intends to require testing and certification of these products once it completes the rulemakings associated with the products, issues notices of requirements, or otherwise resolves the issues that have warranted a continuation of the stay of enforcement for the products.

74 FR at 68591 through 68592.

In July and August 2010, the Commission issued notices of requirements for these products. The notice of requirements pertaining to vinyl plastic film and carpets and rugs appeared in the **Federal Register** of July 21, 2010. 75 FR 42311 (vinyl plastic film); 75 FR 42315 (carpets and rugs). The notice of requirements pertaining to clothing textiles (referred to as "wearing apparel" in the December 28, 2009 notice) appeared in the **Federal Register** of August 18, 2010. 75 FR 51016. Each notice of requirements described the stay of enforcement and then declared that the publication of the notice of requirements had the effect of lifting the stay of enforcement. For example, in the notice of requirements pertaining to clothing textiles, the Commission stated:

> As the factor preventing the stay from being lifted in the December 28, 2009, notice with regard to testing and certifications of clothing textiles was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to 16 CFR part 1610.

75 FR at 51018. In relation to lifting the stay, each notice of requirements also described when manufacturers of children's products subject to the respective regulations would be required to certify their products based on third party testing.

Recently, various parties have contacted CPSC staff to ask whether the stay of enforcement had been lifted with respect to non-children's products subject to the cited CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles. Although some manufacturers interpreted the notices of requirements as lifting the stay of enforcement with respect to both non-children's and children's products, others interpreted the text as applying only to children's products. Other parties informed CPSC staff that they did not consider reading the notices of requirements for information relevant to manufacturers because the notices of requirements provide the criteria and process for Commission acceptance of accreditation of third party laboratories for testing pursuant to CPSC regulations.

Given the apparent confusion about whether the stay of enforcement for non-children's products subject to the cited CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles has been lifted, the Commission, through this notice, is announcing that the stay of enforcement pertaining to the certification under section 14(a)(1) of the CPSA for non-children's products will be lifted as of January 26, 2011. Thus, after January 26, 2011, every manufacturer of a non-children's product (and the private labeler of such product if such product bears a private label) subject to CPSC regulations pertaining to:

- Carpets and rugs (16 CFR parts 1630 and 1631),
- Vinyl plastic film (16 CFR part 1611) or
- Wearing apparel (16 CFR part 1610),

whose product is imported for consumption or warehousing or distributed in commerce, must issue a certificate for that product. (The term "manufacturer" includes importers (see 16 CFR part 1110).)

Dated: December 17, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–32181 Filed 12–23–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0171]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness)(Military Personnel Policy)/Accession Policy, *Attn:* Major Arturo Roque, or call (703) 695–5527.

Title, Associated Form, and OMB Control Number: Request for Verification of Birth, DD Form 372, OMB Control Number: 0704–0006.

Needs and Uses: Title 10, USC 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable

to provide a birth certificate, the recruiter will forward a DD Form 372, "Request for Verification of Birth," to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and the applicants place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 8,200 hours.

Number of Respondents: 140,000.

Responses per Respondent: 1.

Average Burden per Response: .058 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information provides the Armed Services with the exact birth date of an applicant. The DD Form 372 is the method of collecting and verifying birth date on applicants who are unable to provide a birth certificate from their city, county, or state. The DD Form 372 is considered the official request for obtaining the birth date on applicants.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32384 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–DARS–0180]

Submission for OMB Review; Comment Request

AGENCY: DoD.

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 26, 2011.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 244, Subcontracting Policies and Procedures; OMB Control Number 0704–0253.

Type of Request: Extension.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Average Burden per Response: 16 hours.

Annual Burden Hours: 1,440 hours.

Needs and Uses: Administrative contracting officers use this information in making decisions to grant, withhold, or withdraw purchasing system approval at the conclusion of a purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32385 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–DARS–0179]

Submission for OMB Review; Comment Request

AGENCY: DoD.

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 26, 2011.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.4, Contract Pricing; DD Form 1861, Contract Facilities Capital Cost of Money; OMB Control Number 0704–0232.

Type of Request: Extension.

Number of Respondents: 10,300.

Responses per Respondent: approximately 5.

Annual Responses: 53,458.

Average Burden per Response: 10 hours.

Annual Burden Hours: 538,480 hours.

Needs and Uses: DoD contracting officers use DD Form 1861 in computing profit objectives for negotiated contracts. A DD Form 1861 is normally completed for each proposal for a contract for supplies or services that is priced and negotiated on the basis of cost analysis. The form enables contracting officers to differentiate profit objectives for various types of contractor assets (land, buildings, equipment). DoD needs this information to develop appropriate profit objectives when negotiating Government contracts.

DoD contracting officers need the information required by DFARS 215.407–5, Estimating systems, and the related contract clause at 252.215–7002, Cost Estimating System Requirements, to determine if a contractor has an acceptable system for generating cost estimates, and to monitor the correction of any deficiencies.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32386 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0174]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), Office of the Assistant Secretary of Defense (Reserve Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness (Reserve Affairs)) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to RAND Corporation *Attn:* Dr. Susan M. Gates, 1776 Main Street, Santa Monica, CA 90407 or call 310–393–0411.

Title, Associated Form, and OMB Control Number: Department of Defense Focus Groups of Employers; OMB Control Number 0704–TBD.

Needs and Uses: The Department of Defense Focus Groups of Employers are designed to identify ways of supporting employers when Guard and Reserve employees are absent due to military duties and targeting such support, explore the characteristics of duty-related absences (such as frequency and duration) that have the greatest impact on employers, characterize the attitudes of employers toward Guard and Reserve employees, and examine knowledge of and compliance with Uniformed Services Employment and Reemployment Rights Act (USERRA) and other ESGR programs. The Department of Defense Focus Groups of Employers are intended to complement information gathered through the Department of Defense National Survey of Employers. The Department of Defense will use these data to inform decisions related to the management of Guard and Reserve.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government organizations.

Annual Burden Hours: 225 hours.

Number of Respondents: 150.

Responses per Respondent: 1.

Average Burden per Response: 1.5 hours.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that persons who serve or have served in the Armed Forces, Reserves, National Guard or other "uniformed services:" (1) Are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The Act covers members of the Uniformed Services, any other category of persons designated by the President in time of war or national emergency, and their government and civilian employers. It is the responsibility of the Employer Support of the Guard and Reserve (ESGR) to promote cooperation and understanding between Reserve component members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. The Department of Defense Focus Groups of Employers are being conducted using a stratified cluster sampling design to provide in-depth information to determine best practices of ESGR in supporting employers of Reserve and Guard members and to evaluate the effectiveness of ESGR and DoD programs. The information collected is used in conjunction with survey information collected on a statistically random and nationally-representative basis. The information collected is used for overall program evaluation, management and improvement.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32388 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0170]

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense for Installations and Environment, Office of Economic Adjustment, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Economic Adjustment announces the proposed reinstatement with change of a previously approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the Office of Economic Adjustment, *ATTN:* Ms. Margit Myers, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–2884; E-mail comments submitted via the Internet should be addressed to: *Margit.Myers@wso.whs.mil,* or call Ms. Margit Myers at (703) 604–6020.

Title, Associated Form, and OMB Number: Base Realignment and Closure (BRAC) Military Base Reuse Status, DD Form 2740, OMB Control Number 0790–0003.

Needs and Uses: Through the Office of Economic Adjustment (OEA), Department of Defense funds are provided to communities for economic adjustment planning in response to closures of military installations. A measure of program evaluation is the monitoring of civilian job creation and type of redevelopment at the former military installations. The respondents to the annual survey will generally include a single point of contact at the local level who is responsible for overseeing redevelopment efforts. If this data is not collected, Office of Economic Adjustment would have no accurate, timely information regarding the civilian reuse of former military bases. A key function of the economic adjustment program is to encourage private sector use of lands and buildings to generate jobs as military activity diminishes and to serve as a clearinghouse for reuse data.

Affected Public: Business or Other For-Profit; Federal Government; State, Local, or Tribal Government.

Annual Burden Hours: 100.

Number of Annual Respondents: 100.

Annual Responses to Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collection is authorized by the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, Public Law 101–510, 10 U.S.C. 2391, and Executive Order 12788.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32397 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–OS–0090]

Submission for OMB Review; Comment Request

AGENCY: DoD.

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 26, 2011.

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Number 0730–0003.

Type of Request: Extension.

Number of Respondents: 230,000.

Responses per Respondent: 1.

Annual Responses: 230,000.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 8,000 hours.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS' existing services.

Affected Public: Individuals or Households, Businesses or other For-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32395 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–HA–0176]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Appeals, Hearings and Claims Collection Division, Office of General Counsel, TRICARE® Management Activity, *Attn:* Mark P. Donahue, 16401 East Centretech Parkway, Aurora, CO 80011–9066, or via telephone at (303) 676–3411.

Title; Associated Form; and OMB Number: Professional Qualifications Medical/Peer Reviewers, CHAMPUS Form 780, OMB Number 0720–0005.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within TRICARE®. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Business or other for profit.

Annual Burden Hours: 20.

Number of Respondents: 60.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide medical and peer review of cases appealed to the Appeals, Hearings and Claims Collection Division, Office of General Counsel, TRICARE® Management Activity. CHAMPUS Form 780 records the professional qualifications of the medical or peer reviewer. The completed form is included as an exhibit in the appeal or hearing case file to document the professional qualifications of the medical professional who reviewed the case. If the form is not included in the case file, individuals reviewing the file cannot confirm the qualifications of the reviewing medical professional. Having qualified professionals provide medical and peer review is essential in maintaining the integrity of the appeal and hearing process.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32394 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0175]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by document number and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the TRICARE Management Activity—Aurora, Performance Evaluation and Transition Management Branch, 16401 E. Centretech Parkway,

Attn; John J.M. Leininger, Aurora, CO 80011–9066 or call TRICARE Management Activity—Aurora, Performance Evaluation and Transition Management Branch, at (303) 676–3613.

Title, Associated Form and OMB Number: Health Insurance Claim Form, CMS–1500, OMB Control Number 0720–0001.

Needs and Uses: This information collection requirement is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE's commitment to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Business or other for profit institutions, not-for-profit institutions, Federal government, state, local or tribal government.

Annual Burden Hours: 21,500,000.

Number of Respondents: 86,000,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by health care providers under the TRICARE Program. TRICARE is a health benefits entitlement program for active duty, the dependents of active duty Uniformed Services members and deceased sponsors, retirees and their dependents, dependents of Department of Homeland Security (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. The CMS–1500 Form is used by individual professional health care or health care related providers to file for reimbursement of civilian health care services or supplies provided to TRICARE beneficiaries. This is the national standard claim form accepted by all major commercial and government payers.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32393 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–HA–0177]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Naval Health Research Center (NHRC), Department of the Navy, announces a new proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Commanding Officer, Naval Health Research Center, ATTN: Michael Galarneau, MS, NREMT, Code 161, 140 Sylvester Road, San Diego, CA 92106, or call at (619) 553–841 (this is not a toll-free number).

Title; Associated Form; and OMB Number: Traumatic Brain Injury, Post-Traumatic Stress Disorder, and Long-Term Quality of Life Outcomes in Injured Tri-Service U.S. Military Personnel; OMB Control Number 0720–TBD.

Needs and Uses: The information collection requirement is necessary for the Naval Health Research Center (NHRC) to carry out the research study it has been tasked to perform. This research study will assess the long-term health impact of injury on quality of life outcomes in injured tri-service U.S. military personnel, with a special focus on the effects of traumatic brain injury (TBI) and Post-traumatic Stress Disorder (PTSD).

Information collected will be used to investigate the long-term effects of injury, TBI, and PTSD on the overall physical and psychological health of military personnel injured in overseas contingency operations. Participants will respond to a health-related questionnaire bi-annually for three to six years. Respondents to this study will include both active-duty and separated members of all branches of the U.S. Armed Forces that have been injured and that have indicated a desire to participate through an Institutional Review Board (IRB)-approved informed consent process.

Affected Public: Current and former members of the U.S. Armed Forces that have been injured in overseas contingency operations and that have indicated a desire to participate.

Annual Burden Hours: 3,065 hours.

Number of Respondents: Approx. 4,644.

Responses per Respondent: 2.

Average Burden per Response: 20 minutes.

Frequency: Bi-annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collection is necessary for the Naval Health Research Center (NHRC) to carry out the research study "TRAUMATIC BRAIN INJURY, POST-TRAUMATIC STRESS DISORDER, AND LONG-TERM QUALITY OF LIFE OUTCOMES IN INJURED TRI-SERVICE U.S. MILITARY PERSONNEL." NHRC has been tasked by the office of Congressionally Directed Medical Research Programs (CDMRP) to conduct this longitudinal epidemiological study. The NHRC team will collect information about physical and psychological health from members of the U.S. Armed Forces that have been

injured in overseas contingency operations by administering a voluntary web, phone, or mail survey bi-annually for a period of three (3) to six (6) years. In all cases, informed consent will be obtained prior to survey administration. The information collected will be used to ascertain the long-term effects of traumatic brain injury (TBI), Post-traumatic Stress Disorder (PTSD), and other injuries on quality of life outcomes. Pinpointing the effects of these injuries will allow for the development of more effective treatments and early interventions in the management of TBI, PTSD, and other injuries sustained by U.S. military personnel in overseas contingency operations.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32392 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0172]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity, (Human Resources Regional Service Center, Staffing Section), ATTN: Ms. Patti Ross, 4040 North Fairfax Drive, Arlington, VA 22203, or call (703) 588–3915.

Title, Associated Form, and OMB Control Number: Department of Defense Education Activity, Student Teacher Application, DoDEA Form 5308.1–F1, and OMB Number 0704–TBD.

Needs and Uses: This information collection requirement, including the Social Security Number (SSN), will be used by security personnel for National Crime Information Center, State Criminal Histories, and Federal Bureau of Investigation record checks to determine eligibility to serve as a student teacher volunteer. The information will also be used to ensure that the student teacher is not in a pay status as a Department of Defense Education (DoDEA) employee at the time of the student teaching experience.

Affected Public: Individuals or households.

Annual Burden Hours: 50 hours.

Number of Respondents: 150.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: One-time. Filling out a new application only occurs when a student teacher volunteer changes from one school to another school or if the student teacher volunteer has a 2-year break in school volunteer service.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The data collection is necessary to collect information from applicants for student teaching positions from which to determine eligibility for appointment as a student teacher volunteer. Information collection is necessary to determine if a student teacher applicant is suitable for a position involving extensive, frequent, or recurring unsupervised interaction with a student or students under the age of 18. The DoDEA Form 5308.1–F1, "Student Teacher Application," records the name, SSN, address, phone numbers, and e-mail address of the student teacher applicant.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32390 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0173]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) Department of Defense Education Activity, *Attn:* Dr. Sandra Embler, 4000 Defense Pentagon, Washington, DC 20301–4000 or call (703) 588.3175.

Title and OMB Control Number: DoDEA Continuous School Improvement Student and Parent Surveys, OMB Control Number 0704–TBD.

Needs and Uses: This information collection requirement is necessary in order for schools to identify areas for improvement. Under the DoDEA Community Strategic Plan, individual schools have a need to collect data from student(s) and parent(s)/guardian(s) to identify school-related issues to be addressed through the school improvement process. Information gathered via these voluntary data collections will provide individual schools information to determine student and parent/guardian perceptions of school processes; provide early detection of school problems; and focus attention on areas that will improve the quality of education. Schools do not have existing data to meet this need.

Affected Public: Individuals or households.

Annual Burden Hours: 720.

Number of Respondents: 2160.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Every school in the Department of Defense Education Activity is required annually to develop a school improvement plan. This plan is necessary to fulfill DoDEA's Community Strategic Plan as well as meet the requirements set forth by AdvancED, the accrediting agency for DoDEA's schools. To develop their individual plans, schools have a need to collect information from students and parents in seven primary areas: (1) School's vision and purpose, (2) leadership, (3) instruction, (4) assessments, (5) available resources and support, (6) communication, and (7) commitment to continuous improvement. The information gained from this data collection will be used to guide schools in identifying areas of need, developing strategies to address areas of concern, and to monitor effects of strategies on major stakeholders.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32389 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–DARS–0178]

Submission for OMB Review; Comment Request

AGENCY: DoD.

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 26, 2011.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 204, Administrative Matters, and related clauses at DFARS 252.204; DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, and DD Form 2051–1, Request for Information/Verification of Commercial and Government Entity (CAGE) Code; OMB Control Number 0704–0225.

Type of Request: Extension.

Number of Respondents: 10,751.

Responses per Respondent: 1.

Annual Responses: 10,751.

Average Burden per Response: 1.04 hours.

Annual Burden Hours: 11,177 hours.

Needs and Uses: DoD uses this information to control unclassified contract data that is sensitive and inappropriate for release to the public; and to facilitate data exchange among automated systems for contract award, contract administration, and contract payment by assigning a unique code to each DoD contractor.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: November 30, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32387 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Military Leadership Diversity Commission Meeting

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of

1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting will take place:

1. *Name of Committee:* Military Leadership Diversity Commission (MLDC).

2. *Date:* January 13, 2011 through January 14, 2011.

3. *Time:*

8 a.m. to 4:30 p.m., January 13, 2011.

8 a.m. to 4:30 p.m., January 14, 2011.

4. *Location:* January 13–14, 2011—The Boars Head, 200 Ednam Drive, Charlottesville, VA 22903.

5. *Purpose of the Meeting:* The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

6. Agenda:

January 13, 2011:

8 a.m.–12 p.m.

DFO opens the meeting

Commission Chairman opening remarks

Deliberation of draft final report

12 p.m. DFO recesses the meeting

1 p.m.–4:30 p.m.

DFO opens the meeting

Commission Chairman opening remarks

Deliberation of draft final report

Commission Chairman closing remarks

DFO adjourns the meeting

January 14, 2011:

8 a.m.–12 p.m.

DFO opens the meeting

Commission Chairman opening remarks

Deliberation of draft final report

12 p.m. DFO recesses the meeting

1 p.m.–4:30 p.m.

DFO opens the meeting

Commission Chairman opening remarks

Deliberation of draft final report

Commission Chairman closing remarks

DFO adjourns the meeting

7. Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on January 12–13, 2011 will be open to the public. Please note that the availability of seating is on a first-come basis.

8. Committee's Designated Federal Officer or Point of Contact: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (571) 882–0140, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail: *steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for its consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Due to external factors and contractual difficulties, beyond the control of the Military Leadership Diversity Commission or its Designated Federal Officer, the Government was unable to process the **Federal Register** notice for the January 13–14, 2011 meeting of the Military Leadership Diversity Commission as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail: *steven.Hady@wso.whs.mil.*

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32383 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150 the Department of Defense announces that Defense Intelligence Agency Advisory Board and two of its subcommittees will meet on January 26 and 27, 2011. The meetings are closed to the public.

DATES: The meeting will be held on January 26, 2011 (from 1:30 p.m. to 5:15 p.m.) and on January 27, 2011 (from 9 a.m. to 4:30 p.m.).

ADDRESSES: The meeting will be held at Bolling Air Force Base.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrison, (703) 647–5102, Alternate Designated Federal Official, DIA Office for Congressional and Public Affairs, Pentagon, 1A874, Washington, DC 20340.

Committee's Designated Federal Official: Mr. William Caniano, (703) 614–4774, DIA Office for Congressional and Public Affairs, Pentagon, 1A874 Washington, DC 20340. *William.Caniano@dia.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

For the Advisory Board and its subcommittees to review and discuss DIA operations and capabilities in support of current operations.

Agenda

January 26, 2011

1:30 pm Convene Full Advisor Board for Administrative Issues

Mr. William Caniano, Designated Federal Official

Mrs. Mary Margaret Graham, Chairman

1:50 pm Break

2:00 pm Subcommittee Business

3:30 pm Break

3:45 pm Subcommittee Business

5:15 pm Adjourn

January 27, 2011

9:00 am Reconvene Full Advisory Board for Briefings and Discussion

12:00 pm Lunch

1:00 pm Briefings and Discussion

3:00 pm Break

3:15 pm Deliberations

Mrs. Mary Margaret Graham, Chairman

4:30 pm Adjourn

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Defense Intelligence Agency has determined that all the meetings shall be closed to the public. The Director, DIA, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the Board's meetings will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Board Committee Act of 1972, the public or interested organizations may submit written statements at any time to the DIA Advisory Board regarding its missions and functions. All written statements shall be submitted to the Designated Federal Official for the DIA Advisory Board. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Board until its next meeting. All submissions provided before that date will be presented to the Board members before the meeting that is subject of this notice. Contact information for the Designated Federal Official is listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 15, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32399 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0182]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on January 26, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155, or Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 17, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 21, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 14 DOD

SYSTEM NAME:

Health Record Tracking System (HRTS).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Ready Reserve (IRR) and Inactive National Guard (ING) members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, tracking information (i.e. status of request and shipment tracking number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 138, Assistant Secretaries of Defense; DoD Directive 5125.01, Assistant Secretary of Defense for Reserve Affairs (ASD(RA)); DoD Instruction 1235.14, Administration and Management of the Individual Ready Reserve (IRR) and the Inactive National Guard (ING); E.O. 9397 (SSN), as amended.

PURPOSE:

The Health Record Tracking System (HRTS) allows the Military Services to request an Individual Ready Reserve (IRR) member's health treatment record (HTR) from the Department of Veterans Affairs (VA) upon mobilization of the individual. The VA is required to maintain the HTR on members of the IRR after they have separated from the military. The Services may request the HTR from the VA when an IRR member is reactivated to active or reserve service. The HTR must be returned to the requesting Military Service within 72 hours of notification. HRTS is the mechanism the Military Services use to request the HTR and identify when VA has shipped the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran's Affairs (VA) for the purpose of completing HTR requests for the Service components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by Social Security Number (SSN).

SAFEGUARDS:

Electronic records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are deleted when two years old, or two years after the date of the latest entry, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, 400 Gigling Rd., Seaside, CA 93955–6771.

Individuals should provide his/her full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURE:

Individuals seeking to access the information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense (OSD)/Joint Staff Freedom of Information Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the full name and Social Security Number (SSN) of the requester, along with the name and number of this system of records notice and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in the OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Service Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–32396 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0168]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Intelligence Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 26, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and/RIN number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: DIA Privacy Act Coordinator, Records Management Section, 200 MacDill Blvd., Washington, DC 20340, or Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: December 14, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

DCIFA 01

SYSTEM NAME:

CIFA Operational and Analytical Records (February 25, 2005, 70 FR 9281).

Reason: The records collected and maintained in this system are covered under Ldia 10–0002, Intelligence/Counterintelligence/Operation Record System (June 15, 2010, 75 FR 33791).

[FR Doc. 2010–32400 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[Docket ID DOD–2010–OS–0169]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete three systems of records.

SUMMARY: The Office of the Secretary of Defense is deleting three systems of records notices from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 26, 2011 unless comments are received, which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and Regulatory Information Number (RIN) and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Privacy Act Officer, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Office of the Secretary of Defense proposes to delete three systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 16, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

DWHS P12

Executive Development Program and Training Files (February 22, 1993, 58 FR 10227).

Reason: The Executive Development Program and Training Files (DWHS P12) can be deleted. The records covered by this system are also covered by government-wide system notice OPM/GOVT–1, General Personnel Records.

DWHS B45

DoD Salary Offset Suspense Control Records (February 22, 1993, 58 FR 10227).

Reason: The collection of records covered by the DoD Salary Offset Suspense Control Records system of records is also covered by the Defense Finance and Accounting System T7330a, Salary Offset Reporting System (November 14, 2007, 72 FR 64055) system of records.

DWHS B46

DoD Creditor Agency Accounts Receivable System (February 22, 1993, 58 FR 10227).

Reason: The collection of records covered by the DoD Creditor Agency Accounts Receivable System system of records is also covered by the Defense Finance and Accounting System T7332, Defense Debt Management System (February 17, 2009, 74 FR 7665) system of records.

[FR Doc. 2010–32398 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0032]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2011.

ADDRESSES: You may submit comments, identified by document number and title by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center, (CEIWR–NDC–C), PO Box 61280, *Attn:* Christopher Dale Brown, New Orleans, LA 70161–1280, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Vessel Operation Report; ENG Forms 3925, 3925B, 3925C, 3925P; OMB Control Number 0710–0006.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, 3925C, and 3925P as the basic instruments to collect waterborne commerce statistics. These data, collected from vessel operating companies, constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors; are essential to plans for maintaining U.S. navigable waterways; and are critical to enforcing the "Harbor Maintenance Tax" authorized under Sec. 1402 of Public Law 99–662.

Affected Public: Business or other for profit.

Annual Burden Hours: 13,560.

Number of Respondents: 842.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Monthly.

SUPPLEMENTARY INFORMATION: The information collected is the basic data from which the Corps of Engineers compiles and publish waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, and rehabilitation projects. It is also used by other Federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics.

Dated: December 20, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–32391 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Supplemental Draft Environmental Impact Statement for a Proposed Flood Risk Management Project on the Red River of the North in Fargo, ND, and Moorhead, MN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The St. Paul District of the U.S. Army Corps of Engineers (St. Paul District) will prepare a Supplement to the Draft Environmental Impact Statement and Feasibility Study (EIS/FS) for a Proposed Fargo-Moorhead Flood Risk Management Project on the Red River of the North in Fargo, ND, and Moorhead, MN (Proposed Fargo-Moorhead Project). On May 5, 2009, the St. Paul District published a notice of intent to prepare a Draft EIS/FS for a Proposed Fargo-Moorhead Project. On June 11, 2010, the St. Paul District published a notice of availability of the Draft EIS/FS. The U.S. Army Corps of Engineers has now decided to prepare a Supplemental Draft EIS/FS to further evaluate impacts of a Proposed Fargo-Moorhead Project and potential measures to mitigate for those impacts. The Supplemental Draft EIS/FS should be available for public review and comment in the spring of 2011.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Supplemental Draft EIS/FS may be directed to: Mr. Terry J. Birkenstock, Chief, Environmental and GIS Branch, 180 Fifth Street East, Suite 700, St. Paul, MN 55101–1678, *telephone:* (651) 290–5264.

DATES: As described below, additional scoping will not be conducted; however, the St. Paul District will consider comments related to the scope of the Supplemental Draft EIS/FS that are received before January 26, 2011.

SUPPLEMENTARY INFORMATION: Fargo, North Dakota, and Moorhead, Minnesota, are on the west and east banks, respectively, of the Red River of the North approximately 150 miles south of the Canada/United States border. In addition to the Red River, the Wild Rice, Sheyenne, Maple, Rush and Lower Rush Rivers in North Dakota and the Buffalo River in Minnesota also cross the study area.

Subsequent to the publication of the notice of availability of the Draft EIS/FS in June 2010, hydraulic modeling indicated downstream impacts from the Proposed Fargo-Moorhead Project that were greater than those anticipated and presented in the Draft EIS/FS. In addition, public and agency comments on the Draft EIS/FS raised additional issues. The purpose of the Supplemental Draft EIS/FS is to develop and evaluate additional information related to downstream impacts and other issues raised and to evaluate potential alternatives for the Project.

The U.S. Army Corps of Engineers will continue to act as the lead agency for the Supplemental Draft EIS/FS and the cities of Fargo and Moorhead will act as cooperating partners.

Additional scoping meetings will not be held for the Supplemental Draft EIS/FS. A significant volume of comments were received during the public comment period on the Draft EIS/FS regarding potential downstream impacts and proposed alternatives that might serve to mitigate these impacts. These comments, as well as the extensive scoping and partnering accomplished in the course of preparation of the Draft EIS/FS, provide information to determine the appropriate scope for the Supplemental Draft EIS/FS. Further, the St. Paul District will consider comments related to the scope of the Supplemental Draft EIS/FS that are received before January 26, 2011.

Dated: December 15, 2010.

Terry J. Birkenstock,

Chief, Environmental and GIS Branch.

[FR Doc. 2010–32499 Filed 12–23–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2010–0046]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The U.S. Marine Corps proposes to add a system of records to its inventory of record systems to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 24, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775, or Ms. Tracy Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, was submitted on September 13, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 16, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

M11320–1

SYSTEM NAME:

Emergency Incident Reporting System.

SYSTEM LOCATION:

Primary Location: Reporting Systems, Inc., 851 Coho Way, Suite 301, Bellingham, WA 98225–2021.

SECONDARY LOCATION:

United States Marine Corps (USMC) Installation Fire and Emergency Services (F&ES) Departments. Official mailing addresses are contained in the Standard Navy Distribution List (SNDL).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees, Active Duty Marines, Reserve and retired Marines involved in responding to U.S. Marine Corps F&ES emergency incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, home address, marital status, gender, ethnic group, home and work phone numbers, employment history, awards, years of service, administrative data consisting of; rank/grade, citizenship, emergency contact information (includes dependent information), military/Federal employees and off-duty education. Training information includes fire and emergency service certifications and qualifications, fire and emergency service skills and schools.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; DoDI 6055.06, DoD Fire and Emergency Services (F&ES) Program; Marine Corps Order 11000.11B, Marine Corps Fire Protection and Emergency Services Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Emergency Incident Reporting System provides records management and reporting for the Fire and Emergency Services (F&ES) program. The system collects and reports on all types of emergency incidents responded to by U.S. Marine Corps F&ES resources. It has the capability to collect, analyze and report prevention and inspection data as well as equipment inventories. The system also collects personnel training, certifications required for employment, and administrative data. Provides required reporting capabilities to plan, program, budget for, and execute the U.S. Corps Fire and Emergency Services (F&ES) program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To emergency care and definitive care medical professionals as allowed by law during the course of providing medical treatment.

To Officials and employees of federal, state and local government through official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To the United States Fire Administration National Fire Incident Reporting System (NFIRS) as required by DODI 6055.06, DoD Fire and Emergency Services (F&ES) Program for the collection and reporting of incident response information.

To disaster related agencies and services such as the American Red Cross and the Federal Emergency Management Agency (FEMA) as required in the provision of emergency related services.

To the Occupational Safety and Health Administration (OSHA) during the course of an on-site inspection.

The DoD "Blanket Routine Uses" set forth at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records in file folders.

RETRIEVABILITY:

By name, Social Security Number (SSN), and/or date of birth.

SAFEGUARDS:

System login is accomplished by DoD Common Access Card (CAC). Public Key Infrastructure (PKI) network login is required and allows for documents to be digitally signed and encrypted. All U.S. unauthorized persons may enter and leave buildings only with an authorized escort. Records are maintained in areas accessible only to authorized personnel with a specific and recorded need-to-know.

RETENTION AND DISPOSAL:

Records generated by the system are considered permanent records and will retire to Washington National Records Center (WNRC) when 4 years old and transfer to National Archives and Records Administration (NARA) when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official, Program Manager, Fire and Emergency Service Program (LFF–1) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Fire Chiefs of the local U.S. Marine Corps F&ES Installations. Official mailing addresses are contained in the Standard Navy Distribution List (SNDL).

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Installation Fire Chief. Official mailing addresses are contained in the Standard Navy Distribution List (SNDL).

Request must include name, Social Security Number (SSN) and date of birth, the request must also be signed and contain a complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Installation Fire Chief. Official mailing addresses are published in the Standard Navy Distribution List (SNDL).

Request must include name, Social Security Number (SSN) and date of birth, the request must also be signed and contain a complete mailing address.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals; supervisors; personnel files; federal, state and local agencies; educational institutions; and automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–32401 Filed 12–23–10; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2010–2]

Pulse Jet Mixing at the Waste Treatment and Immobilization Plant

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: Pursuant to 42 U.S.C. 2286a(a)(5), the Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy concerning the use of pulse jet mixing at the Waste Treatment and Immobilization Plant located in Washington State.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before January 26, 2011.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone number (202) 694–7000.

Dated: December 20, 2010.

Peter S. Winokur,

Chairman.

Recommendation 2010–2 to the Secretary of Energy

Pulse Jet Mixing at the Waste Treatment and Immobilization Plant

Pursuant to 42 U.S.C. 2286(a)(5).

Atomic Energy Act of 1954, as Amended.

Dated: December 17, 2010.

Introduction

Legacy wastes from decades of nuclear weapons production by the Department of Energy (DOE) and its predecessor agencies include high-level radioactive waste stored in 177 underground tanks at the Hanford Site. The risk posed by the continued storage of wastes in these tanks is considerable. Many of the tanks have a history of leakage, several are more than 60 years old, and most will be far beyond their intended service life by the time the wastes are retrieved and processed into stable forms. DOE must ensure that the Hanford Waste Treatment and Immobilization Plant (WTP) in conjunction with the Hanford tank farm waste feed delivery system will operate safely and effectively for many decades to eliminate the safety hazards posed by the wastes. This imperative requires that the pulse jet mixing and transfer systems relied upon in the WTP design perform reliably and effectively for decades of WTP operations, and that technical issues with the performance of these components be resolved in time to enable DOE to meet its existing commitment to begin WTP operation in 2019.

Background

In a letter to DOE's Assistant Secretary for Environmental Management dated January 6, 2010, the Defense Nuclear Facilities Safety Board (Board) summarized its concerns related to WTP's mixing and transfer systems; specifically, that the pulse jet mixers (PJMS) lacked sufficient power to mix adequately and to transfer the most rapidly settling particles expected to be present in the Hanford waste inventory. In its letter, the Board identified three significant safety issues related to pulse jet mixing: (1) Retention of fissile materials in vessel heels would present a criticality safety concern, (2) retention of flammable gas due to the presence of solids in vessel heels, and (3) the presence of a large solids inventory could have a detrimental effect on the vessel level instrumentation, which is required to control the PJMs.

In its May 17, 2010, response to the Board's letter, DOE committed to take actions to increase confidence in successful operation of WTP. These actions included integrated testing of vessel mixing and transfer systems at a larger scale. However, DOE did not provide details such as the scope and schedule for this effort.

On July 1, 2010, the Consortium for Risk Evaluation and Stakeholder Participation (CRESP), an independent technical review team under contract to DOE, issued a report that identified concerns similar to the Board's. Specifically, CRESP found that there was uncertainty in PJM performance and that the absence of full-scale or near full-scale testing represented a large risk for the WTP program. The CRESP report presented DOE with thirteen recommendations that addressed topics of Board concern, e.g., large-scale testing, reliance upon computational fluid dynamics modeling, functional performance specifications for inspecting and accessing vessel bottoms, heel removal needs and operating strategies, and criticality safety.

On October 7–8, 2010, the Board held a public hearing on WTP issues, of which one session focused on evaluating the state of the PJM design. In advance of the public hearing, the Board asked DOE to respond to written questions related to PJMs. These questions focused on the scope of integrated testing at larger scale and DOE's actions to address the concerns raised by CRESP. DOE provided written responses to the Board's questions on September 8, 2010, but did not provide insight into the scope or schedule of the large-scale testing. DOE's responses stated that the objectives and schedule for the large-scale testing were projected to be established by the end of calendar year 2010; this has since been revised to January 2011. DOE's response also stated that DOE and its contractors would address the recommendations from the CRESP report, but that schedules for addressing most of the recommendations had not yet been established.

The Board's written questions also asked DOE to describe each open safety issue related to PJM performance. DOE responded that the primary safety-related issue that remained open was associated with performance of the integrated mixing and transfer system, which includes the PJM mixing system and associated controls, the suction line, and the vessel sampling system. DOE did not identify any concerns related to accumulation of solids in WTP vessels.

In response to the questions posed by the Board, DOE included a response from Pacific Northwest National Laboratory (PNNL) providing its expert opinion on the adequacy of the PJM design. PNNL has performed considerable testing and analysis in support of the WTP mixing system design. PNNL noted in part:

- Phase 1 testing performed by PNNL predicted inadequate mixing in some vessels. The WTP project team subsequently changed the mixing criterion from complete off-bottom suspension to a bottom-clearing metric. This change represents a significant reduction of the mixing criterion.
- The WTP project team commissioned additional testing to this new criterion using waste simulants. PNNL has several concerns related to the simulants used in the WTP project team's tests, as the simulants were not necessarily physically representative or bounding of actual waste. PNNL expressed the concern that mixing performance observed in the WTP project team's tests may be better than actual plant performance.
- The current design lacks an adequate scaling basis to relate small-scale test results to full-scale plant performance. The scaling of the mixing, transfer system, and pump-down process is complex. The absence of an experimentally validated scaling basis for pump-down represents a significant weakness of the current design basis.

During the Board's public hearing, DOE and its contractors acknowledged the need for large-scale testing and committed to complete relevant portions of such testing before installing process vessels in the WTP Pretreatment Facility, which is currently under construction at the Hanford Site. DOE

informed the Board that development of suitable waste simulants would likely be the most time-consuming aspect of the preparations for large-scale testing. DOE's commitment to complete applicable portions of a large-scale testing program prior to installation of the Pretreatment Facility vessels is a positive development.

Unresolved Concerns

The Board believes that the testing and analysis completed to date have been insufficient to establish, with confidence, that the pulse jet mixing and transfer systems will perform adequately at full scale. The Board's unresolved technical concerns are summarized below:

Limitations of the small-scale testing program—The small-scale testing program did not investigate the performance limits of the PJM design. Rather, it demonstrated that the mixing system met a reduced mixing criterion using simple simulant materials that were not fully representative of the characteristics of Hanford's high-level wastes. The testing program did not evaluate the entire range of WTP operating conditions, used non-prototypic equipment for much of the testing, and did not include multi-batch test runs to establish whether the mixing and transfer systems could operate for long periods under a variety of operating conditions. The program did not address the behavior of non-Newtonian wastes, such as the effects of variations of viscosity within a vessel, or the unique arrangement of PJMs in vessels containing these wastes. Pump-out testing did not include prototypic simulant or transfer system components, and lacked a well-established scaling basis. Large-scale testing would remedy this issue.

Modeling of mixing performance—Computer simulations of mixing performance, such as the Low Order Accumulation Model, have not been verified and validated, yet have been used to advance the WTP mixing design. DOE plans to use computer simulations in validating the final WTP mixing design and is working to verify and validate a computational fluid dynamics code (FLUENT) for this purpose. Any use of computer simulations must be technically defensible, and the limits of each computational fluid dynamics simulation need to be well understood to prevent potential safety issues from arising during operations.

Waste characterization and feed certification—The WTP safety strategy depends upon obtaining representative samples from the high-level waste feed tanks to support WTP's waste feed certification requirements, and from WTP process vessels to ensure safety-related criteria are met. This capability has not been demonstrated in the Hanford Tank Farms or WTP process vessels. Obtaining samples that are sufficiently representative to support bounding estimates of the composition and properties of both the solid and liquid fractions of the high-level waste is required in order to demonstrate that the WTP can be operated safely (*e.g.,* prevent inadvertent criticality and plugging of transfer lines).

The WTP project team has altered its mixing performance criterion and made changes to the waste acceptance criteria, such as reducing the allowable solids concentration for WTP feed to address unfavorable mixing test results. DOE and its contractors have not yet been able to explain the full impact of these changes on DOE's ability to qualify WTP feed and process the entirety of Hanford's high-level waste using WTP. Additionally, DOE and its contractors have not been able to explain how representative samples from PJM-mixed tanks will be obtained.

Planned WTP process vessel modifications—DOE is planning to add capabilities for heel dilution, vessel pump-out, and visual inspection to address potential risks and uncertainties remaining from small-scale testing; however, the specifications for and capabilities of these systems have not been established.

Limitations of PJM controller and instrumentation testing—DOE has not performed PJM controller and instrumentation tests with a combination of (1) A prototypic simulant; (2) a full-scale PJM system driven by jet pump pairs; and (3) prototypic level/density instrumentation and controllers. Pretreatment Engineering Platform testing revealed that the level/density probes provided spurious data because of plugging and interference resulting from hydrodynamic pressures from the PJMs and transfer pumps. In addition, PNNL stated that the PJM controller testing performed in 2009 had several limitations and that "any extrapolation of the data above and beyond the scope of the present work should be done with extreme caution."

Recommendation

Therefore, the Board recommends that DOE:

1. Develop a large-scale test plan, including a schedule and milestones that addresses the issues raised by the Board in this recommendation, by CRESP in its letter reports addressing pulse jet mixing, and by PNNL. The objective of the test plan should be to define the limits of the WTP pulse jet mixing and transfer systems given the complete range of physical properties for the high-level waste stored in the Hanford Tank Farms. The elements of the test plan should include: (1) Design of simulants; (2) design of the prototypic mixing systems, including PJM control and tank level control systems, and the transfer system for the large-scale test; and (3) criteria for review and interpretation of the large-scale test results. The test plan schedule should be constructed such that results from the testing can be used to inform WTP process vessel design decisions. The large-scale test platform must integrate the scaling of the mixing and transfer systems such that the scaling of the test platform is technically defensible.

2. Develop waste simulants for the mixing and transfer system testing that envelope the complete range of physical properties for the high-level waste stored in the Hanford Tank Farms. The simulant selection should include simulants representative of the waste's Newtonian and non-Newtonian properties and particle shape, *e.g.,* irregularly shaped simulant particles. The physical properties selected for each simulant must reflect uncertainties in the existing characterization of the high-level wastes.

3. Complete verification and validation of any computational models used by the WTP project team (*e.g.,* Low Order Accumulation Model and FLUENT) based on the results from the large-scale testing.

4. Demonstrate the ability to obtain representative samples of the solids and liquids in all of WTP's vessels, including demonstrating that representative samples can be obtained even if the assumed WTP design particle size or density is exceeded. This will ensure that the sampling system does not exclude large, dense particles and artificially bias the measured particle size and density distribution. The representativeness of these samples must be statistically defensible and meet appropriate confidence limits given the significance of the safety-related issues in WTP.

5. Define the impact on the waste retrieval, feed delivery, and feed certification processes due to any limitations of the WTP mixing and transfer systems, and demonstrate the ability to obtain adequately representative samples from the waste feed tanks to ensure the WTP waste acceptance criteria can be reliably enforced.

6. Establish functional design criteria for the heel dilution, heel pump-out, and visual inspection functions, and demonstrate the capabilities and limits of these systems through the large-scale testing.

7. Identify the technical and safety-related risks that remain unresolved upon completion of the large-scale testing and establish suitable risk management strategies to ensure that each remaining risk will have little, if any, potential impact on DOE's ability to begin WTP operations safely and consistent with existing commitments.

In order to preclude unnecessary delay in the WTP project, the Board urges the Secretary to avail himself of the authority under the Atomic Energy Act (U.S.C. 2286d(e)) to "implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection."

Peter S. Winokur, Ph.D.,
Chairman.

[FR Doc. 2010–32365 Filed 12–23–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–1.

Dates:

Applications Available: December 27, 2010.

Deadline for Transmittal of Applications: February 25, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to enable highly qualified individuals, including those who are individuals with disabilities, to conduct research on the rehabilitation of individuals with disabilities.

Note: This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities: This competition contains one absolute priority and one invitational priority.

Absolute Priority: For FY 2011, this priority is an absolute priority. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 356.10). Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 authorizes research demonstration projects, training, and related activities, the purpose of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency, of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

For FY 2011, the Secretary is particularly interested in applications from eligible applicants who are individuals with disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR part 356. (c) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $111,919,000 for the NIDRR program for FY 2011, of which we intend to use an estimated $505,000 for the Research Fellowships Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $60,000 to $65,000 for Merit Fellowships and $70,000 to $75,000 for Distinguished Fellowships.

Estimated Average Size of Awards: $63,000 for Merit Fellowships and $73,000 for Distinguished Fellowships.

Maximum Awards: We will reject any application that proposes a budget exceeding $65,000 for Merit Fellowships and $75,000 for Distinguished Fellowships for a single budget period of 12 months. (These Fellowships are described in the *Eligible Applicant* section of this notice.) The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: Seven total, including both Merit Fellowships and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most

recent competitions for this program, Merit Fellowship recipients had research experience at the doctoral level.

(b) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of Research Fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133F.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 double-spaced pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 27, 2010.

Deadline for Transmittal of Applications: February 25, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the term of the fellowship award. We define one FTE as equal to 40 hours per week. No Fellow is allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Merit or Distinguished Fellowship grant (during the duration of the Fellowship award performance period). Fellows may, subject to compliance with their institution's policy on additional employment, work on a Federal grant that has been awarded to the Fellow's institution.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number on your application; and

d. Maintain an active CRR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with

Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research Fellowships Program—CFDA Number 84.133F–1 must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Research Fellowships Program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program [competition] to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7643.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133F–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133F–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research projects that use rigorous scientific methodologies. To address this interest applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge or improvements in policy and practice. Applicants should propose projects that are optimally designed to be consistent with these goals. Submission of the information identified under this paragraph is not required by law or regulation, but is desired.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance

report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowships program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through a review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 21, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–32494 Filed 12–23–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

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

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before January 26, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503; and

Tyler Huebner, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Fax # (202) 586–1233. *tyler.huebner@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Tyler Huebner, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.
Fax # (202) 586–1233.
tyler.huebner@ee.doe.gov.

Reporting requirements concerning these Weatherization Assistance Program Sub-programs are available for review at the following Web site: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* "*1910–*"*; (2) Information Collection Request Title:* "Weatherization Assistance Program Sub-programs"; (2) *Type of Review:* New; (3) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (4) *Annual Estimated Number of Respondents:* 77; (5) *Annual Estimated Number of Total Responses:* 308; (6) *Annual Estimated Number of Burden Hours:* 3,696; (7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $147,840.

Authority: Title IV, Section 411(b) of the Energy Independence and Security Act (EISA), Public Law 110–140; American Recovery and Reinvestment Act of 2009 (ARRA); Energy Policy Act of 2005; Energy and Water Development Appropriations Act for Fiscal Year 2010.

Issued in Washington, DC on December 20, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–32440 Filed 12–23–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–017]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of Electrolux Home Products, Inc. (Electrolux) From the Department of Energy Residential Clothes Washer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Electrolux Home Products, Inc. (Electrolux) petition for waiver (petition) from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of clothes washers. Today's notice also grants to Electrolux an interim waiver from these same portions of the clothes washer test procedure. Through this notice, DOE also solicits comments with respect to the Electrolux petition.

DATES: DOE will accept comments, data, and information with respect to the Electrolux petition until, but no later than January 26, 2011.

ADDRESSES: You may submit comments, identified by case number CW–017, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include "Case No. CW–017" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309).[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for automatic and semi-automatic clothes washers is contained in 10 CFR part 430, subpart B, appendix J1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. An interim waiver may be extended for an additional 180 days. 10 CFR 430.27(h).

II. Application for Interim Waiver and Petition for Waiver

On December 8, 2010, Electrolux filed a petition for waiver and application for interim waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, Electrolux requested a waiver to test its clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the residential test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet.

Electrolux's petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. Electrolux manufactures basic models with capacities greater than 3.8 cubic feet, and it is for these

[1] For editorial reasons, on codification in the U.S. Code, Part B was re-designated Part A.

basic models that Electrolux seeks a waiver from DOE's test procedure.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Electrolux has submitted a revised table to extend the maximum basket volume from 3.8 cubic feet to 6.0 cubic feet, a table is similar to one developed by the Association of Home Appliance Manufacturers (AHAM). AHAM provided calculations to extrapolate Table 5.1 of the DOE test procedure to larger container volumes. DOE believes that this is a reasonable procedure because the DOE test procedure defines test load sizes as linear functions of the basket volume. AHAM's extrapolation was performed on the load weight in pounds, and AHAM seems to have used the conversion formula of 1/2.2 (or 0.45454545) to convert pounds to kilograms. LG and Samsung submitted a table similar to the table proposed by AHAM, rounding the results in kilograms to two decimal places. However, this table does contain small rounding errors which were corrected in the table included in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR) (75 FR 57556, September 21, 2010). Electrolux requests to use a table identical to Table 5.1 from DOE's clothes washer test procedure NOPR (75 FR 57556, September 21, 1010). *See* discussion in the Alternate Test Procedure section, below.

An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)). DOE determined that Electrolux's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Electrolux might experience absent a favorable determination on its application for interim waiver. Previously, however, DOE granted an interim test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 ft.^{3} (71 FR 48913, August 22, 2006). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 ft^3. On September 16, 2010, DOE granted interim waivers to General Electric (75 FR 57915, September 23, 2010) and Samsung (75 FR 57937, September 23, 2010) for similar products. On November 18, 2010, DOE granted an interim waiver to LG for similar products as well (75 FR 71680, November 24, 2010). The alternate test procedure in the GE petition was the same as that granted to Whirlpool in its interim waiver, while the alternate test procedure in the Samsung and LG petition used the slightly different and more accurate conversion factor discussed above.

The current test procedure specifies test load sizes only for machines with capacities up to 3.8 cubic feet. In addition, testing a basic model with a capacity larger than 3.8 cubic feet using the current procedure could evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Based on this, and the interim waivers granted to Whirlpool, Samsung, GE, and LG it appears likely that the petition for waiver will be granted. As a result, the Department of Energy grants an interim waiver to Electrolux for of the basic models of clothes washers with container volumes greater than 3.8 cubic feet specified in its petition for waiver, pursuant to 10 CFR 430.27(g). DOE also provides for the use of an alternative test procedure extending the linear relationship between test load size and container capacity. Therefore, *it is ordered that:*

The application for interim waiver filed by Electrolux is hereby granted for the specified Electrolux clothes washer basic models, subject to the specifications and conditions below.

1. Electrolux shall not be required to test or rate the specified clothes washer products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix J1.

2. Electrolux shall be required to test and rate the specified clothes washer products according to the alternate test procedure as set forth in section IV, "Alternate test procedure."

The interim waiver applies to the following basic model groups:

Model	Brand
EIFLS55***	Electrolux.
EIFLS60***	Electrolux.
EIFLW55***	Electrolux.
EWFLS65***	Electrolux.
EWFLS70***	Electrolux.
EWFLW65H	Electrolux.
EWFLW65I	Electrolux.
FAFS4272**	Frigidaire.
FAFS4473**	Frigidaire.
FAFS4474**	Frigidaire.
LAFW7000**	Frigidaire
LAFW8000**	Frigidaire.
417.4110*	Kenmore.
417.4413*	Kenmore.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. Electrolux may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to make representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations for the grant of a waiver or interim waiver from an applicable test procedure at 10 CFR 430.27, DOE is considering setting an alternate test procedure for Electrolux in a subsequent Decision and Order. This alternate procedure is intended to allow manufacturers of clothes washers with basket capacities larger than provided for in the current test procedure to make valid representations. This test procedure is based on the expanded Table 5.1 of Appendix J1 from DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR) (75 FR 57556, September 21, 2010). The NOPR Table 5.1 uses the accurate conversion factor 0.45359237 to convert from pounds to kilograms, and does not contain rounding errors. Furthermore, if DOE specifies an alternate test procedure for Electrolux, DOE may consider applying the alternate test procedure to similar waivers for residential clothes washers.

During the period of the interim waiver granted in this notice, Electrolux shall test its clothes washer basic models according to the provisions of 10

CFR part 430 subpart B, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume			Minimum load		Maximum load		Average load
cu. ft.	liter	lb	kg	lb	kg	lb	lb
≥ <		≥ <					
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.80	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.00	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.20	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.40	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.60	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.90	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.10	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.30	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.50	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.70	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Electrolux's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to Electrolux. DOE publishes Electrolux's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of clothes washers with capacities larger than the 3.8 ft^3 specified in the current DOE test procedure. DOE is interested in receiving comments from interested

parties on all aspects of the petition, including the suggested alternate test procedure and any other alternate test procedure.

Instructions: All submissions received should include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Sheila A. Millar, Partner, Keller and Heckman LLP, 1001 G Street, NW., Suite 500 West, Washington, DC 20001; (202) 434–4135, E-mail: *millar@khlaw.com.* George E. Hawranko, Senior associate General Counsel, Electrolux Home Products, Inc., 20445 Emerald Parkway, SW., Suite 250, P.O. Box 35920, Cleveland, Ohio 44135–0920; (216) 898–1800; *E-mail: george.e.hawranko@electrolux.com.*

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

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.

Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on December 17, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

December 8, 2010

Via Hand Delivery

The Honorable Catherine R. Zoi
Assistant Secretary
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
Mail Station EE–10
Forrestal Building
1000 Independence Avenue, SW.,
Washington, DC 20585–0121

Re: Petition for Waiver and Application for Interim Waiver from the Department of Energy Residential Clothes Washer Test Procedure by Electrolux Home Products, Inc.

Dear Assistant Secretary Zoi:

On behalf of our client, Electrolux Home Products, Inc. (Electrolux), we respectfully submit this Petition for Waiver and Application for Interim Waiver, pursuant to 10 C.F.R. § 430.27, requesting exemption by the Department of Energy from certain parts of the test procedure for determining the energy consumption of automatic and semi-automatic clothes washers.

Electrolux is a manufacturer and global leader of clothes washers and other household and professional use appliances. Electrolux focuses on innovations that are thoughtfully designed, based on extensive consumer insight, to meet the real needs of consumers and professionals. Electrolux's principal clothes washer brands in the United States include Electrolux®, Frigidaire®, and the following OEM brands: Kenmore®.

This petition for waiver contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

I. Petition for Waiver

Electrolux seeks the Department's approval of this proposed amendment to the residential clothes washer test procedure to be assured of properly calculating the energy consumption and properly labeling its products. The test procedure under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6291 et seq., provides for clothes washers to be tested with specified allowable test load sizes. See 10 CFR part 430, subpart B, appendix J1, Table 5.1. The largest average load under Table 5.1 is 9.20 lbs (4.17 kg). Electrolux believes that it is appropriate for DOE to grant this Petition for Waiver which would allow for testing and rating of specified Electrolux models (see below) with larger test loads where the model has a container volume that is greater than the largest volume shown on Table 5.1.

The following basic Electrolux residential clothes washer models are subject to this Petition for Waiver. The actual model numbers will vary to account for year of manufacture, product color, or other features (e.g., whether or not the unit has a top load or front load or other features), but whose energy impact is calculated based on test load sizes in accordance with this Petition.

Brand	Model
Electrolux	EIFLS55***
Electrolux	EIFLS60***
Electrolux	EIFLW55***
Electrolux	EWFLS65***
Electrolux	EWFLS70***
Electrolux	EWFLW65H
Electrolux	EWFLW65I
Frigidaire	FAFS4272**
Frigidaire	FAFS4473**
Frigidaire	FAFS4474**
Frigidaire	LAFW7000**
Frigidaire	LAFW8000**
Kenmore	417.4110*
Kenmore	417.4413*

DOE has already granted interim waivers to Whirlpool, General Electric, Samsung, and LG for testing with larger test loads for specified models in excess of 3.8 cubic feet. See 71 Fed. Reg. 48,913 (Aug. 22, 2006) (Whirlpool); 75 Fed. Reg. 57,915 (Sept. 23, 2010) (GE); Id. at 57,937 (Sept. 23, 2010) (Samsung); Id. at 71,680 (Nov. 24, 2010) (LG). In each case, the Department set forth an alternative "test procedure" to be used for the models covered by the waiver, which is simply an alternative table with extrapolated test load values for a container volume capacity up to 6 cubic feet. Further, the Department recently published notice of its "Decision and Order Granting a Waiver to Whirlpool" from the DOE's residential clothes washer test procedure. See 75 Fed. Reg. 69, 653 (Nov. 15, 2010) ("Decision and Order").

The Association of Home Appliance Manufacturers (AHAM) has submitted comments to DOE suggesting that the DOE test procedure be amended to provide for testing with loads in excess of those shown in Table 5.1 when testing is done on clothes washers with volumes in excess of 3.8 cubic feet. See AHAM Comments on the Framework Document for Residential Clothes Washers; EERE–2008–BT–STD–0019;

RIN 1904–AB90, at Appendix B—AHAM Proposed Changes to J1 Table 5.1 (Oct. 2, 2009). AHAM provided calculations in its comments to extrapolate Table 5.1 to larger container volumes. The DOE has since issued a Notice of Proposed Rulemaking (NOPR) proposing to amend the DOE test procedure to adopt the AHAM proposed Table 5.1. 75 Fed Reg. 57,556 (Sept. 21, 2010). As DOE recognizes, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Id. at 69,654.

DOE's NOPR and November 15, 2010 Decision and Order granting the Whirlpool waiver used a slightly different conversion factor than those set forth in some initial applications for waivers. See Id. at 69,655. The differences are due to slight differences in the conversion factor used to convert pounds to kilograms. Id. Electrolux requests that DOE grant a waiver for testing and rating based on the revised Table 5.1 attached hereto in Appendix 1 (this is the Table 5.1 used by DOE in the NOPR), and applied to its testing and rating of basic models specified above.[2] The waiver should continue until DOE adopts an applicable amended test procedure.

II. Application for Interim Waiver

Electrolux also requests an interim waiver for its testing and rating of the foregoing basic models manufactured after the grant of the interim waiver. The petition for waiver is likely to be granted, as evidenced not only by its merits, but also because DOE has granted interim waivers to other manufacturers (Whirlpool, GE, Samsung, and LG), a permanent waiver to Whirlpool, and has proposed a corresponding amendment to its test procedure.

Further, an interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 C.F.R. § 430.27(g). Electrolux will experience economic hardship if this waiver is not granted, since waivers and interim waivers have been granted to competitors. In addition, public policy considerations require that this waiver be granted. As the Department noted in recently granting LG's interim waiver request, "testing a basic model with a capacity larger than 3.8 cubic feet using the current procedure could evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data." 75 Fed. Reg. at 71,682. A grant of an interim waiver for Electrolux is also appropriate.

We would be pleased to discuss this request with DOE and provide further information as needed. Electrolux will notify all manufacturers of domestically marketed units of the same product type, as set forth in Appendix 2, as required by the Department's rules, and provide them with a version of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Sheila A. Millar

Enclosures

cc: Michael Raymond

Bryan Berringer

Appendix 1

REVISED TABLE 5.1—TEST LOAD SIZES

Container volume			Minimum load		Maximum load		Average load
cu. ft.	liter		lb	kg	lb	kg	lb
	<	<					
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.9	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.4	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99

[2] All Electrolux models are measured in accordance with DOE's final guidance for measuring clothes container capacity under the test procedure in 10 CFR part 430, subpart B, appendix J1.

REVISED TABLE 5.1—TEST LOAD SIZES—Continued

Container volume			Minimum load		Maximum load		Average load
cu. ft.	liter		lb	kg	lb	kg	lb
	<	<					
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.8	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.80	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.00	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.20	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.40	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.60	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.90	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.10	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.30	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.50	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.70	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Appendix 2

Philip Manthei, Senior Staff Engineer, Agency and Codes Approval, Alliance Laundry Systems LLC, 221 Shepard Street, Ripon, WI 54971.

Michael L. Baroni, General Counsel, BSH Home Appliances Corporation, 5551 McFadden Avenue, Huntington Beach, CA 92649.

John Taylor, Vice President, Government Relations and Communications, LG Electronics U.S.A., Inc., 1776 K Street, NW., Washington, DC 20006.

Bryce Wells, Marketing Manager, Fisher & Paykel Appliances, 27 Hubble Street, Irvine, CA 92618–4209.

Earl F. Jones, Senior Counsel—Government Relations, GE Consumer & Industrial, Appliance Park, AP2–225, Louisville, KY 40225.

Shariff Kan, President, White Goods Group, Haier America, 1356 Broadway, New York, NY 10018.

[FR Doc. 2010–32436 Filed 12–23–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–45–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

December 17, 2010.

Take notice that on December 6, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco), PO Box 1396, Houston, Texas 77251, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to partially abandon storage deliverability at the Washington Storage Field in St. Landry Parish, Louisiana. Transco states that, subsequent to Commission approval of the proposed abandonment, Transco and its Rate Schedule WSS–Open Access customers will execute amendments to the applicable service agreements to reflect the revised Storage Demand Quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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. For assistance, contact FERC at *FERC OnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Ingrid Germany, Staff Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, PO Box 1396, Houston, Texas 77251–1396 at (713) 215–4015.

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 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.

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 an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32360 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–11–000]

Critical Path Transmission, LLC; Clear Power, LLC; v. California Independent System Operator, Inc.; Notice of Complaint

December 17, 2010.

Take notice that on December 14, 2010, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2010) and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2006), Critical Path Transmission, LLC and Clear Power LLC (Complainants) filed a complaint against California Independent System Operator, Inc. (CAISO or Respondent), alleging a violation of the CAISO tariff, as more fully explained in the complaint.

Complainants state that copies of the complaint were served upon Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32362 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2149–152]

Public Utility District No. 1 of Douglas County; Notice of Intent To Prepare an Environmental Impact Statement

December 16, 2010.

On May 27, 2010, Public Utility District No. 1 of Douglas County filed an application for the continued operation of the 774.3-megawatt Wells Hydroelectric Project No. 2149. Federal lands within the project boundary include 8.60 acres of U.S. Department of Interior and 6.55 acres of U.S. Army Corps of Engineers land.

In accordance with the National Environmental Policy Act (NEPA) and the Commission's regulations, Commission staff held public scoping meetings for the relicensing of the Wells Project on February 28, 2007, in East Wenatchee and Brewster, Washington. Based on the comments received in response to the Commission's August 10, 2010 *Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions,* and an errata to this notice issued on August 19, 2010, Commission staff has determined that relicensing of the Wells Project may constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff now intends to prepare an Environmental Impact Statement (EIS) that addresses the relicensing of the Wells Project.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in the final EIS. The staff's conclusions and recommendations will be available for the Commission's consideration in reaching its final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Draft EIS	April 6, 2011.
Comments on Draft EIS due	May 23, 2011.

Milestone	Target date
Commission issues Final EIS	October 6, 2011.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) The Commission staff has decided to prepare an EIS addressing the relicensing of the Wells Project; and (2) the prior scoping conducted on this project by Commission staff and comments filed with the Commission on the application will be taken into account in the EIS.

Any questions regarding this notice may be directed to Kim A. Nguyen at (202) 502–6105, or by e-mail at *kim.nguyen@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32359 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–10–000]

Southern California Edison Company; Notice of Petition for Declaratory Order

December 17, 2010.

Take notice that on December 9, 2010, Southern California Edison Company (SCE), pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(2009), filed a Petition for Declaratory Order requesting that the Commission issue a declaratory order approving specific incentive rate treatment for four transmission projects (expansion of Colorado River Substation, expansion of Whirlwind Substation, the South of Kramer transmission project, and the West of Devers transmission project) that SCE is proposing to construct projects that will facilitate the development of over 3,700 MW of wind and solar generation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 10, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32361 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–12–000]

Idaho Wind Partners 1, LLC; Notice of Petition for Declaratory Order

December 17, 2010.

Take notice that on December 15, 2010, Idaho Wind Partners 1, LLC (Petitioner), pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2010), filed a Petition for Declaratory Order. Petitioner requests that the Commission issue an order confirming that proposed transaction in connection with an instantaneous sale of energy and renewable energy credits by the Project Companies [1] to a third-party offtaker, with an instantaneous buy-back of the energy only would not: (1) Violate any of the Commission's anti-manipulation rules, and (2) result in the loss of small power producer qualifying facility status for any of the wind generation facilities owned by Project Companies and would not disqualify the ultimate sale of electric power from the Project Companies to the local utility from being considered an avoided cost sale by a QF pursuant to the Public Utility Regulatory Policies Act of 1978, as amended (PURPA).[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

[1] Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, Oregon Trail Wind Park, LLC, Payne's Ferry Wind Park LLC, Camp Reed Wind Park, LLC, Yahoo Creek Wind Park, LLC, Salmon Falls Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Burley Butte Wind Farm, LLC, Milner Dam Wind Farm LLC, Golden Valley Wind Farm, LLC (collectively, the "Project Companies").

[2] Public Law 109–58 § 1253, 119 Stat. 594, 967–70 (2005).

Comment Date: 5 p.m. Eastern Time on January 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–32363 Filed 12–23–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–1029; FRL–9242–9]

Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted Under the Clean Air Act and Related to the Mandatory Greenhouse Gas (GHG) Reporting Rule, 40 CFR Part 98, Subparts A, LL and MM

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Transportation and Air Quality (OTAQ) plans to authorize various contractors to access information which will be submitted to EPA under the Clean Air Act that may be claimed as, or may be determined to be, confidential business information (CBI). Contractor access to this information, which is related to the Mandatory Greenhouse Gas (GHG) Reporting Rule, 40 CFR Part 98, subparts A, LL and MM, will begin January 6, 2011.

DATES: EPA will accept comments on this Notice through January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Anne-Marie C. Pastorkovich, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; *telephone number:* 202–343–9623; *fax number:* 202–343–2801; *e-mail address: pastorkovich.anne-marie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to parties such as suppliers of coal-based liquid fuels and suppliers of petroleum products, as described in 40 CFR Part 98 subparts LL and MM, respectively. (40 CFR Part 98, subpart A contains general provisions related to registration and reporting.) Parties who may be interested in this notice include refiners, importers, and exporters of these products. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket EPA–HQ–OAR–2010–1029.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2010–1029 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), we collect compliance reports and other information from them. Occasionally, the information submitted is claimed to be confidential business information (CBI). Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs) that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to CBI submitted to us under the Clean Air Act and in connection with the Mandatory GHG Reporting program. We are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with the Mandatory GHG Reporting program. We are issuing this **Federal Register** notice to inform all submitters of information within our reporting system that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number EP–W–09–22, PowerSolv, Incorporated, 1801 Robert Fulton Drive #550, Reston, Virginia, 20191 and its subcontractor, Indus Corporation, 1951 Kidwell Drive—8th Floor, Vienna, Virginia, 22182 provides technical support and information technology services that involve access to information claimed as CBI related to the Mandatory GHG Reporting Rule. Access to data, including information claimed as CBI, will commence on January 6, 2011 and will continue until May 31, 2011. If the contract is extended, this access will continue for the remainder of the contract without further notice.

Under Contract Number EP–W–10–15, Compass Solutions, Incorporated, 2760 Eisenhower Avenue, Suite 404, Alexandria, Virginia 22314 provides report processing and program support that involves access to information claimed as CBI related to the Mandatory GHG Reporting Rule. Access to data, including information claimed as CBI, will commence on January 6, 2011 and will continue until September 30, 2011. If the contract is extended, the access described in this paragraph will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS35F4797H, CGI, Incorporated, 12601 Fair Lakes Circle, Fairfax, Virginia, 22033 provides technical and information technology support related to submission of data via EPA's Central Data Exchange (CDX). Access to fuels data, including information claimed as CBI, will

commence on January 6, 2011 and will continue until March 31, 2012. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

OTAQ utilizes the services of enrollees under the Senior Environmental Employment (SEE) program. Some SEE enrollees are provided through Grant Number CQ–83880–01, Senior Service America, Inc., (SSAI), 8403 Colesville Road, Suite 1200, Silver Spring, Maryland 20910–3314. SEE enrollees are also provided through Grant Number CQ–833436, the National Association for Hispanic Elderly (NAHE), 234 E. Colorado Blvd., Suite 300, Pasadena, California 91101. Access to data related to the Mandatory GHG Reporting Rule, including information claimed as CBI will commence on January 6, 2011 and will continue until August 31, 2011. If these grants are extended, this access will continue for the remainder of the grants and any future extensions without further notice.

Parties who wish further information about this **Federal Register** notice or about OTAQ's disclosure of information claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 10, 2010.

Karl J. Simon,

Director, Compliance and Innovative Strategies Division, Office of Transportation & Air Quality, Office of Air and Radiation.

[FR Doc. 2010–32449 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1158; FRL–9244–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel (Renewal); EPA ICR Renewal No. 2364.03, OMB Control No. 2060–0639

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 26, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1158, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–343–9017; *fax number:* 202–343–2801; *e-mail address: heard.geanetta@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 October 14, 2010 (75 FR 63175), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1158, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel (Renewal).

ICR Numbers: EPA ICR No. 2364.03, OMB Control No. 2060–0639.

ICR Status: This ICR is scheduled to expire on December 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: With this information collection request (ICR), we are seeking permission to continue to allow refiners, importers, distributors, and retailers of highway diesel fuel the option to use an alternative affirmative defense if the Agency finds highway diesel fuel samples above the specified sulfur standard at retail facilities. The highway diesel program regulations require most motor vehicle (highway) diesel fuel sold at retail stations to contain 15 parts per million (ppm) sulfur or less (hereafter referred to as ultra low sulfur diesel fuel, or ULSD) beginning October, 2006. General recordkeeping and reporting related to diesel fuel regulations for on-road, non-road and performance-based test methods are included in EPA ICR 1718.08 (OMB Control Number 2060–0277).

Under the regulation, where a violation of the 15 ppm sulfur standard is identified at a retail outlet, the retailer responsible for dispensing the noncompliant fuel is deemed liable, as well as the refiner(s), importer(s) and distributor(s) of such fuel. The highway diesel regulations further provide, however, that any person deemed liable can rebut this presumption by establishing an affirmative defense that

includes, among other things, showing that it conducted a quality assurance sampling and testing program as prescribed by the regulations. This ICR covers burdens and costs associated with provisions that allow refiners and importers of ULSD an alternative means of meeting the affirmative defense requirements in the diesel sulfur regulations by participating in a nationwide diesel fuel sampling and testing program. The reporting burden covered by this proposed ICR relates to reports that refiners, importers and distributors, have to submit in the event they have a non-complying sulfur test result. (See 40 CFR 80.613.) The authority citation for the direct final rule and the association information collection is for the following Clean Air Act sections: 42 United States Code 7414, 7542, 7545, and 7601(a).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refiners, importers, marketers and other distributors of highway diesel fuel.

Estimated Number of Respondents: 20.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 320 hours.

Estimated Total Annual Cost: $22,720 in labor costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 20, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–32460 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9243–8]

Science Advisory Board Staff Office; Notification of Two Public Quality Review Teleconferences of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the chartered SAB to conduct quality reviews of three SAB draft reports. On January 19, 2011, the chartered SAB will review two draft SAB Panel reports entitled "Review of The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields" and "Review of Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams." On January 20, 2011 the SAB will review a draft SAB Committee report entitled "Reactive Nitrogen in the United States; an Analysis of Inputs, Flows, Consequences, and Management Options: A Report of the EPA Science Advisory Board."

DATES: The public teleconferences on January 19, 2011 and January 20, 2011 will both be held from 12 p.m. to 3 p.m. (Eastern Time).

ADDRESSES: The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the January 19, 2011 teleconference should contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2155; fax (202) 565–2098 or via e-mail at *armitage.thomas@epa.gov*. Any member of the public wishing to obtain general information concerning the January 20, 2011 teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218; fax (202) 565–2098 or via e-mail at *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the EPA Science Advisory Board will hold two public teleconferences to conduct quality reviews of three SAB draft reports.

The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

January 19, 2010 teleconference. The chartered SAB will first conduct a quality review of a draft SAB panel report entitled "Review of the Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields." This draft SAB panel report reviews EPA's assessment of the ecological impacts related to mountaintop mining and valley-fill operations. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/MTM-VF%20Assessment?OpenDocument*.

The SAB will also conduct a quality review of a draft SAB panel report entitled "Review of Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams." This SAB panel report reviews EPA's draft chronic aquatic life conductivity benchmark to prevent the loss of 95% of native species in Appalachian streams exposed to mountaintop mining and valley fills. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Water%20Quality%20Conductivity?OpenDocument*.

January 20, 2010 Teleconference. The chartered SAB will conduct a quality review of an SAB original study "Reactive Nitrogen in the United States; an Analysis of Inputs, Flows, Consequences, and Management Options." The SAB study analyzes the sources and fate of reactive nitrogen and provides advice to EPA on integrated nitrogen research and control strategies. Background information about this advisory activity can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Nitrogen%20Project?OpenDocument*.

Availability of Meeting Materials: The agenda and other materials in support of the teleconferences will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconferences.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. Those interested in being placed on the public speakers list for the January 19, 2011 teleconference should contact Dr. Armitage at the contact information provided above by January 14, 2011. Those interested in being placed on the public speakers list for the January 20, 2011 teleconference should contact Dr. Nugent at the contact information provided above by January 18, 2011. *Written Statements:* Written statements for the January 19, 2011 teleconference should be supplied to the DFO via e-mail to *armitage.thomas@epa.gov* by January 14, 2011. Written statements for the January 20, 2011 teleconference should be supplied to the DFO via e-mail to *nugent.angela@epa.gov* by January 18, 2011. Written statements should be supplied in one of the following acceptable file format: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage or Dr. Nugent, as appropriate at the contact information provided above. To request accommodation of a disability, please contact him preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: December 16, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–32455 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2010–1053, FRL–9243–2]

Ward Transformer Superfund Site Raleigh, Wake County, NC; Notice of Settlements

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a five settlements for reimbursement of past response costs concerning the Ward Transformer Superfund Site located in Raleigh, Wake County, North Carolina for publication.

DATES: The Agency will consider public comments on the settlements until January 26, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlements are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2010–1053 or Site name *Ward Transformer Superfund Site by one of the following methods:*

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: December 14, 2010.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2010–32459 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

December 15, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 26, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Numbers: 3060–0906.

Title: 47 CFR Section 73.624(g), FCC Form 317.

Form Number: FCC Form 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 9,351 respondents; 18,702 responses.

Estimated Hours per Response: 2–4 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement.

Total Annual Burden: 56,106 hours.

Total Annual Cost: $1,402,650.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 301, 303, 336 and 403 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On September 30, 2004, the Commission adopted the Report and Order, In the Matter of Amendments of parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, Television Booster Stations, and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 04–220 (released September 30, 2004). In this Report and Order, the Commission establishes rules and policies for digital low power television ("LPTV") and television translator ("TV translator") stations and modifies certain rules applicable to digital Class A TV stations ("Class A"). The Commission addresses important issues such as: (1) The digital low power television transition; (2) channel assignments; (3) authorization of digital service; (4) permissible service; (5) mutually exclusive applications; (6) protected service area; and (7) equipment and other technical and operational requirements. Furthermore, the Report and Order adopts the following information collection requirement:

47 CFR 73.624(g) adds a new group of respondents to this collection (namely, "low power television, TV translator, and Class A television station DTV licensees"). The Commission has also revised FCC Form 317 and its instructions to indicate that low power television, TV translator, and Class A television station DTV licensees are required to file FCC Form 317 and to report their ancillary and supplementary services, make the required payment to the Commission, and retain the appropriate records.

OMB Control Numbers: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740, and 73.3598; CDBS Informal Forms; Section 73.788; FCC Form 337.

Form Number: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 4,070 respondents; 4,070 responses.

Estimated Hours per Response: 0.5 to 4 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,105 hours.

Total Annual Cost: $2,059,410.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On September 30, 2004, the Commission adopted the Report and Order, In the Matter of Amendments of parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, Television Booster Stations, and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 04–220 (released September 30, 2004). In this Report and Order, the Commission establishes rules and policies for digital low power television ("LPTV") and television translator ("TV translator") stations and modifies certain rules applicable to digital Class A TV stations ("Class A"). The Commission addresses important issues such as: (1) The digital low power television transition; (2) channel assignments; (3) authorization of digital service; (4) permissible service; (5) mutually exclusive applications; (6) protected service area; and (7) equipment and other technical and operational requirements. Furthermore, the Report and Order adopts a new information collection requirement, which provides that new digital low power television, television translator, and Class A permittees may submit FCC Form 337, Application for Extension of Time to Construct a Digital Television Broadcast Station, should an acceptable reason for failing to construct, as set forth in 47 CFR 74.788(c)(1)–(2), apply.

Also, the other information collection requirements contained under OMB control number 3060–0386, Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; §§ 1.5, 73.1615, 73.1635, 73.1740, and 73.3598 of the Commission rules; CDBS Informal Forms, have already been approved by OMB and remain unchanged.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–32470 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

December 15, 2010.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 26, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to *the* Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mail the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail, contact he person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1000.

Title: Section 87.147, Authorization for Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and one time reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 303, and 307(e).

Total Annual Burden: 25 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. The Commission is reporting no change in its burden estimates. The Commission is seeking OMB approval for an extension (there are no changes to the reporting and/or third party disclosure requirements).

Section 87.147 is needed to require applicants for aviation equipment certification to submit a Federal Aviation Administration (FAA) determination of the equipment's compatibility with the National Airspace System (NAS). This will ensure that radio equipment operating in certain frequencies is compatible with the NAS, which shares system components with the military. The notification must describe the equipment, give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

This information collected is used by FCC engineers to determine the interference potential of the proposed operation.

OMB Control Number: 3060–0484.

Title: Section 4.1 and 4.2, and Part 4 of the Commission's Rules Concerning Disruptions to the Communications (NORS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 71 respondents; 139 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154, 218, 219, 230, 256, 301, 302, 303, and 403, and 621.

Total Annual Burden: 19,738 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In accordance with 47 CFR section 4.2, of the Commission's rules, reports under part 4 are presumed confidential.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements). The Commission is reporting a 10,100 total annual burden hour increase. This increased adjustment is due to a recalculation of the number of responses and therefore the total annual burden hours have increased since the last time this collection was submitted to the OMB. The information collection is used in connection with the reporting of significant outages of voice and/or paging communications provided by wireline, wireless, cable circuit-switched telephony, and satellite communications providers.

This information collection is necessary for the following reasons:

(1) Collecting information on significant outages as defined in its rules enables the Federal Communications Commission ("FCC or Commission") to analyze significant disruptions to telecommunications networks, and thereby fulfill its statutory obligations under the Communication Act by ensuring the reliability and security of the nation's telecommunications networks for the benefit of all Americans. Furthermore, these measures are necessary to support the efforts of public safety, national defense, and homeland security entities that rely upon the integrity of our Nation's telecommunications infrastructure to accomplish their own missions. In the absence of—or less frequent—reporting of significant outages as required by the Commission's rules, valuable information regarding telecommunications failures would escape timely FCC analysis, and thus impede the ability to identify potential threats and vulnerabilities involving the Nation's telecommunications infrastructure—particularly those having an adverse impact on public safety, homeland security and national defense priorities.

(1) In addition, the information collected—particularly in cases involving major outage incidents—can be of a nature that constitutes "Critical Infrastructure Information" as defined in 6 U.S.C. section 131, which may be shared with the Department of Homeland Security (DHS) in furtherance of its missions to protect the United States from terrorist activity and to otherwise protect domestic security. Consequently, the collection and timely

reporting of data relating to significant outages as required by these rules is necessary in order for the Commission and DHS to successfully accomplish these critical missions for the benefit of the American people.

(2) *In addition, the mandatory reporting procedures requires three submissions to be transmitted electronically to the Commission's database by each affected provider for each reportable outage as follows:*

(a) a bare-bones *Notification* ("Notification") not later than 120 minutes after discovering a reportable outage;

(b) a more detailed *Initial Communications Outage Report* ("Initial Report") not later than 72 hours after discovering a reportable outage; and

(c) a comprehensive *Final Communications Outage Report* ("Final Report") not later than thirty (30) days after discovering a reportable outage.

As noted above, the information provided in the data collected by providers (collectively "Outage Reports") is essential in enabling the Commission to monitor developments affecting telecommunications reliability and security; to facilitate improvements in telecommunications reliability and security; and to serve as a source of information for the public.

OMB Control Number: 3060–0971.

Title: Section 52.15, Request for "For Cause" Audits and State Commission's Access to Numbering Resource Application Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 2,105 respondents; 63,005 responses.

Estimated Time per Response: .166 hours to 3 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 153, 154, 201–205, 207–209, 218, 225–227, 251–252, 271 and 332.

Total Annual Burden: 10,473 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Carrier numbering resource applications and audits of carrier compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. The Commission is reporting a 42 total hourly burden reduction adjustment. The adjustment is due to a recalculation of the previous estimates submitted to OMB in 2008. The Commission is now seeking OMB approval for an extension (there are no changes to the reporting and/or third party disclosure requirements) to keep this collection from lapsing OMB approval.

There are two Paperwork Reduction Act related obligations under this OMB Control Number 3060–0971.

1. The North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or a state commission may draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation.

2. Requests for copies of carriers' applications for numbering resources may be made directly to carriers.

The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs).

Form Nos.: FCC Forms 507, 508 and 509.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,258 respondents; 10,849 responses.

Estimated Time per Response: .166 hours to 3 hours.

Frequency of Response: On occasion, annual, quarterly, one time and every three years reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1–4, 10, 154(i), 154(j), 201–205, 254, and 403.

Total Annual Burden: 46,885 hours.

Total Annual Cost: $48,900.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission does not require that respondents submit confidential information to the Commission. If the Commission does request applicants to submit information that the respondents believe is confidential, respondents may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period The Commission is now seeking OMB approval for an extension (there are no changes to the reporting and/or third party disclosure requirements) to keep this collection from lapsing OMB approval. The Commission is reporting the following changes in burden since this was last submitted to the OMB. There is a 6,434 increase in the hourly burden which is due to an increase in the number of respondents/responses and a $3,705 increase in annual costs. This increase adjustment in annual costs is due to an increase in filing fees.

The 60 day notice that was published on September 9, 2010 (75 FR 54878) cited an incorrect total annual burden estimate. It has been corrected in this 30-day notice. There are 14 Paperwork Reduction Act (PRA) related information collection requirements under this OMB Control Number 3060–0972.

Following the passage of the Telecommunications Act of 1996, the Commission adopted interstate access charge and universal service support reforms. The reforms were designed to establish a "pro-competitive, deregulatory national policy framework" for the United States telecommunications industry, and to carry out the universal service policies embodied in the 1996 Act. Specifically, the Commission aligned the interstate access rate structure more closely with the manner in which costs are incurred, and created a universal service support mechanism for rate-of-return carriers (Interstate Common Line Support (ICLS)) to replace implicit support in interstate access charges with explicit support that is portable to all eligible telecommunications carriers.

The Commission's actions were also tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and help to provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.

To administer the ICLS mechanism, the Administrator must collect certain data. Specifically, the Administrator must collect from each rate-of-return carrier projected cost and revenue data for the July 1—June 30 funding year to accurately distribute prospective ICLS to those carriers. Line count data is reported on FCC Form 507. Projected

cost data, including cost and revenue data is filed on FCC Form 508. And, the actual data, including cost and revenue data is reported on FCC Form 509.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–32472 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

December 15, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 26, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S; Section 73.3555(d), Daily Newspaper Cross-Ownership.

Form Number: FCC Form 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 3,821 respondents and 3,821 responses.

Estimated Time per Response: 1.25–12 hours.

Frequency of Response: Eight year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 10,403 hours.

Total Annual Costs: 3,886,358.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the "*Order*") in MB Docket Nos. 07–294; 06–121; 02–277; 04–228; MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The *Order* adopted rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the *Order,* the following changes are made to Form 303–S: The instructions have been revised to incorporate a definition of "eligible entity," which will apply to the Commission's existing Equity Debt Plus ("EDP") standard, one of the standards used to determine whether interests are attributable. Section II includes a new certification for licensees to certify that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses. The instructions for Section II have been revised to include a new description of the certification.

Second, Section III includes a new question, Item 4, requiring licensees to certify that, during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days, consistent with the Commission's rules. If a licensee cannot so certify, it must submit an exhibit specifying the exact dates in the preceding license term on which the station was silent or operating for less than its prescribed minimum hours. *See* 47 CFR 73.1740 (Commercial Broadcast Stations); 47 CFR 73.561 (Noncommercial Educational FM Stations); 47 CFR 73.850 (Low-power FM Stations); and 47 CFR 73.1745(b); 47 CFR 73.1740(b) (Noncommercial Educational AM Stations). *See also* 47 U.S.C. 309(k) (Statutory Standards for Broadcast Renewal Procedures); *Birach Broadcasting Corp.,* 16 FCC Rcd 5015, 5020 (2001) (holding that a station's failure to provide any service during the license term is material to whether it served the public interest, convenience, and necessity pursuant to Section 309(k)). Consistent with the holding in *Birach,* the Commission's rules for minimum operating schedules, and the renewal standards set forth in Section 309(k), Section III includes the new certification and the instructions to include a new description of the certification.

Section III, Item 7 (previously Item 6), has been revised to eliminate the requirement that full power AM and FM licensees submit an exhibit to demonstrate compliance with the Commission's maximum permissible radio frequency ("RF") electromagnetic exposure limits, in the event that they are unable or not eligible to use the RF worksheets contained in the instructions of the Form. All applicants continue to be required to certify that their facilities comply with the Commission's maximum permissible RF limits. The elimination of the exhibit requirement for radio broadcasters, conforms the question so it is now consistent with the requirements for licensees of broadcast television stations, translator (FM and TV stations), and low-power FM stations, who are not required to submit an exhibit. The instructions for Section III, Item 7 and Worksheet #1 Environmental have been revised accordingly.

Section V, Item 4 has been revised to clarify that Low Power TV ("LPTV") stations still need to file Form 396 with the renewal application, but that they may or may not need to file a public file report and post it to their Web site. The word "as" has been replaced with the word "if." The old version stated that stations are required to certify that they have created a public file report and posted it to their Web sites "as" required by regulation. The instructions have been revised to explain that for Section V, Item 4, only LPTV stations that are part of a station employment unit with full-power stations, where the unit employs at least five or more full-time employees, needs to file a public file report and post it to the station Web site. Other LPTV stations do not have to create a public file report because they do not have a public file.

Additionally, a small number of typographical errors have been corrected throughout the instructions and form.

Finally, the burden hours and burden costs published in the **Federal Register** on October 13, 2010 (75 FR 62816) have been reduced to reflect that only applicants for renewal of commercial broadcast stations are required to complete the new certification in Section II, Item 7 that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–32468 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 10–244; DA 10–2259]

Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Media and Wireless Telecommunications Bureaus of the Federal Communications Commission seek comment on a recommendation of the Advisory Committee on Diversity for Communications in the Digital Age that the Commission consider a new preference program in its competitive bidding process to provide bidding credits to individuals and entities who have overcome substantial disadvantage.

DATES: Comments are due on or before February 7, 2011; reply comments are due on or before February 25, 2011.

ADDRESSES: You may submit comments, identified by GN Docket No. 10–244, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Media Bureau, Industry Analysis Division:* Amy Brett at (202) 418–2330, or *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Sayuri Rajapakse at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the public notice, released December 2, 2010, in GN Docket No. 10–244, seeking comment on the Advisory Committee's Recommendation released on October 14, 2010. The Advisory Committee's Recommendation, which was released as an attachment to the public notice, is available at *http://www.fcc.gov/DiversityFAC/meeting101410.html.* The complete texts of the public notice and Recommendation are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The public notice may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 10–2259. The public notice is also available on the Internet at the Commission's Web site or by using the search function for GN Docket No. 10–244 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

On October 14, 2010, the Advisory Committee on Diversity for Communications in the Digital Age ("Advisory Committee") formally recommended that the Federal Communications Commission ("Commission") undertake a notice of proposed rulemaking to consider how the Commission could design, adopt, and implement an additional new preference program in its competitive bidding process. Under the proposed preference, persons or entities who have overcome substantial disadvantage would be eligible for a bidding credit. The Advisory Committee explains that the new preference "would expand the pool of designated entities to include those qualified applicants who have overcome substantial disadvantage," noting that the proposed program is

analogous in some respects to programs used by educational institutions in their admissions processes.

The Advisory Committee's Recommendation acknowledges that a number of issues concerning the design and implementation of its proposal would need to be refined and resolved by the Commission in a future rulemaking proceeding. The Media and Wireless Telecommunications Bureaus seek information that will assist the Commission in considering whether to launch a proceeding to further examine the components of the recommended preference. The Bureaus seek comment on the proposal and are especially interested in comments on the following questions. Interested parties need not address all the questions presented, but are encouraged to respond to those about which they have particular knowledge or information.

I. Authority and Objectives

Sections 309(j)(3)(B) and (4)(D) of the Communications Act of 1934, as amended, direct the Commission respectively to seek to disseminate licenses among "a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women" and to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." The Commission has established a program to promote the involvement of statutorily-identified designated entities in the provision of spectrum-based services. Designated entities are defined in 47 CFR 1.2110(a) as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. The Commission's primary method of promoting the participation of designated entities in competitive bidding for wireless services has been to award bidding credits (percentage discounts on winning bid amounts) to small business applicants. In the context of broadcast services, the Commission adopted a tiered new entrant bidding credit to promote the objectives of section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership. That bidding credit may be awarded to broadcast auction applicants having no, or very few, other media interests. The Advisory Committee's Recommendation would establish an additional preference for persons or entities that have overcome substantial disadvantage.

1. Would the proposed preference comply with the Communications Act and other relevant statutes? Does section 309(j)(4)(D) authorize the Commission to establish the proposed preference for individuals who have overcome substantial disadvantage? If not, are there other statutory provisions that afford sufficient authorization? Would the Commission need additional legal authority to implement this new preference?

2. The Commission has previously found that rural telephone companies and minority- and women-owned businesses that qualify as small businesses are able to take advantage of the provisions we have adopted for small businesses. Similarly, in the broadcast context, the Commission established its new entrant bidding credit, having found that a preference for new entrants would be the most appropriate way to implement the statutory provisions regarding opportunities for small, minority- and women-owned businesses based on then-available information on opportunities for designated entities to participate in the provision of broadcast services. The Bureaus seek information to assess how individuals who have overcome substantial disadvantage have fared under the Commission's existing auction process and the designated entity benefits. Have persons who have overcome substantial disadvantages had difficulty in obtaining licenses under the existing process and designated entity programs? Do data exist that would demonstrate that individuals who have overcome substantial disadvantage are underrepresented in the Commission's auctions process? Is there evidence that persons who have overcome substantial disadvantage are more likely than others to utilize Commission licenses in the public interest, or do so to a greater extent? If no such data exist, what information could be developed to assess the need for the proposed bidding preference?

3. In establishing the existing small business bidding credit program, the Commission found that the preferences would allow designated entities to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital. The Advisory Committee's Recommendation notes that the proposed preference would provide fair opportunity to those who have overcome substantial disadvantage and that it would result in the introduction of new entrants having diverse viewpoints. How would this proposed preference provide additional opportunities to individuals and entities that differ from those available under our current bidding credit programs?

4. The Advisory Committee's Recommendation observes that the proposed overcoming disadvantage preference would be subject to a "rational basis" constitutional standard and that any Commission rulemaking "must support the conclusion that the overcoming disadvantage preference program will serve the public interest and is a rational way to further" the program's public interest objectives. What public or governmental interests would be served by establishing such a bidding preference? Commenters are specifically invited to provide information on what interests would be served under this program that are not being addressed with the Commission's existing bidding credit programs.

5. Are there additional constitutional issues raised by the Advisory Committee's Recommendation that the Commission should consider? If so, what are they? How might they be mitigated or eliminated?

II. Eligibility for Preference

6. The Advisory Committee's Recommendation supplies a non-exhaustive list of disadvantages that may have had a substantial negative impact on an individual's "entry into or advancement in the professional world or other comparable context" that might justify the award of a preference, such as physical disabilities or psychological disorders that have rendered professional or business advancement substantially more difficult. Are there other categories of disadvantages that should qualify an individual for preferences beyond those listed in the Recommendation? Should any of the proposed disadvantages not be included? Should any of the disadvantages take precedence over others? Should there be a point system to weigh the relative merit of different disadvantages? Should the Commission develop and publish an exclusive list of qualifying disadvantages, or should determinations about whether a substantial disadvantage is qualifying be made on a case-by-case basis?

7. The Advisory Committee's Recommendation suggests that any disadvantage must be "substantial" in order to qualify an applicant for a preference. By what means should the Commission assess and/or quantify what experience would demonstrate "substantial" disadvantage?

8. What degree of success in overcoming a substantial disadvantage would an applicant have to demonstrate in order to evidence its eligibility for such a preference? How should

applicants be required to document their successes in "substantially" or at least "partially" overcoming disadvantages? Should any successes documented be limited to the applicant's professional achievements, or should success in other contexts be considered by the Commission?

9. At what level of success, if any, should an applicant who has overcome substantial disadvantages become ineligible for the preference (*e.g.,* by what measure of wealth or access to capital)? Should the Commission adopt different levels of preference based on a measure of wealth or access to capital? What criteria should be used to disqualify the applicant from eligibility for a bidding credit? If the Commission adopts an additional preference such as that recommended by the Advisory Committee, how should the Commission implement the statutory requirement to avoid unjust enrichment in the context of its bidding preference program?

III. Administration

10. The Advisory Committee's Recommendation notes that any determination of an individual's or entity's eligibility for an overcoming disadvantage preference would require an examination of all relevant evidence and would be based on an individualized evaluation. The individualized reviews that would occur under the proposed program are subjective in a manner that distinguishes them from existing designated entity programs, which are based on objective criteria such as financial data. By what means could applicants demonstrate that they qualify for the preference? For example, should a narrative explanation suffice? If not, what information or documentation would be necessary to substantiate a claim? Should an applicant be permitted to certify its eligibility for this preference under penalty of perjury in its short-form application when it seeks to participate in an auction, similar to the way in which applicants may certify eligibility for new entrant and small business bidding credits? If so, what guidance can the Commission provide to potential applicants so that they can make a good faith certification of eligibility? The Recommendation suggests that an overcoming disadvantage preference might be applied differently for different services (e.g., a preference might apply only for more valuable licenses in a broadcast auction). Would the Commission have to tailor the preference for specific services in a rulemaking, similar to its existing practice of establishing the small business definitions on a service-by-service basis? The Advisory Committee recognized the importance of reducing subjectivity and achieving consistency among individualized determinations. What standards could the Commission implement to achieve those goals?

11. The Advisory Committee's Recommendation suggests that a determination as to whether applicants have overcome disadvantages could be made within the existing short-form auction application review process. What would be the administrative burden for the Commission to conduct individualized review for such a preference within the relatively short time frames allotted under the existing auctions short-form application process? If the Commission were to allocate additional time in the pre-auction process for such reviews, would the possible burdens on auction applicants be outweighed by the public interest benefits of the proposed preference?

12. As an alternative, the Recommendation suggests that applicants could pre-qualify for preferences and thus avoid subsequent petitions to deny their licenses targeted at their qualification for the preference. Are there Administrative Procedure Act or other concerns for not allowing parties to file petitions challenging a proposed qualification? Is there a reason to treat this qualification differently than other qualifications that are subject to the petition to deny process? Does this raise issues with regard to the requirements of the Communications Act? If an applicant is found to be qualified prior to an auction but experiences a change of status during bidding, or after submitting a winning bid, should the individual remain eligible for the preference? Should a pre-qualification review strictly be limited to the overcoming of substantial disadvantage, or should it be a broader review of an applicant's license qualifications, provided that the pre-auction process is extended?

13. The Advisory Committee's Recommendation suggests three options for the management of qualification review: (1) Establishing a "special cadre" of Commission officials to evaluate applicant qualifications; (2) designing a modified Administrative Law Judge procedure for this purpose; (3) assigning the function to the Commission's Bureau responsible for oversight of the service in question. What are the relative advantages and disadvantages of each option? What aspects of the current process for review of auction applicant eligibility suggest that these additional options are necessary for the proposed preference program?

14. The Advisory Committee's Recommendation asks whether a corporation should be able to receive the proposed preference based on the qualifications of its principal. What role should the principal play in a corporation or other business entity to confer eligibility for the preference on the entity? For instance, should the principal be required to have majority equity ownership and a management role?

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB, Federal Communications Commission.

[FR Doc. 2010–32493 Filed 12–23–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–17]

Office of Inspector General; Delegation of Authorities

AGENCY: Office of Inspector General, Federal Housing Finance Agency.

ACTION: Notice of delegation of authorities.

SUMMARY: This notice delegates two authorities of the Inspector General, Office of Inspector General for the Federal Housing Finance Agency (FHFA–OIG), to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel. These authorities are: (1) The authority to issue subpoenas; and (2) the authority to request information under 5 U.S.C. 552a(b)(7).

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Chief Counsel, FHFA–OIG, at (202) 408–2577, or *Bryan.Saddler@fhfa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Housing Finance Regulatory Reform Act of 2008 (Reform Act), which was passed as Division A of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, 2913, abolished both the Federal Housing Finance Board (FHFB), an independent agency that oversaw the Federal Home Loan Banks (Banks), and the Office of Federal Housing Enterprise Oversight (OFHEO), an office within the Department of Housing and Urban Development (HUD) that oversaw the "safety and soundness" of Fannie Mae and Freddie Mac. *See* 12 U.S.C. 1422a, 4502(6), 4511, 4512, 4513, 4541, 4563 (2006); H.R. Rep. No. 110–142, at 95. The Reform Act established in place of the FHFB and OFHEO a new entity, the Federal Housing Finance Agency (FHFA), which now regulates and supervises Fannie Mae, Freddie Mac, and the 12 Banks. *See* Reform Act sections 1002, 1101, 1102, 1301, 1311; 12 U.S.C.A. 4511, 4512, 4513 (2009).

Section 1105 of HERA also amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and the Inspector General Act of 1978 (the IG Act), by specifying that there shall be established an Inspector General within FHFA. *See* 12 U.S.C. 4517(d). FHFA–OIG is responsible for, among other things, conducting audits, investigations, and inspections of FHFA's programs and operations, and recommending polices that promote economy and efficiency in the administration of, and prevent and detect fraud and abuse in, those programs and operations. Section 6(a)(4) of the IG Act authorizes the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence deemed necessary in the performance of the Inspector General's function. This notice delegates the Inspector General's subpoena issuance authority to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel.

Section 552a(b)(7) of Title 5, United States Code, authorizes the Inspector General to request information protected by the Privacy Act for a civil or criminal law enforcement activity. This notice delegates this authority to request records protected by the Privacy Act for a civil or criminal law enforcement activity from the Inspector General to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel.

The Inspector General has not limited his authority to issue subpoenas or to request information under 5 U.S.C. 552a by this delegation. Also, this delegation expressly prohibits further delegation or redelegation.

Accordingly, the Inspector General delegates the following authorities:

Section A. Authority Delegated: The Inspector General delegates to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel, the authority to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by HERA and the Inspector General Act.

Additionally, the Inspector General delegates to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel, the authority to request information under 5 U.S.C. 552a(b)(7).

Section B. No Further Delegation or Redelegation: The authority delegated in Section A above may not be further delegated or redelegated.

Authority: Pub. L. 110–289, section 1105; 5 U.S.C. App. 3 § 6(a)(4); 5 U.S.C. 301.

Dated: December 14, 2010.

Steve A. Linick,

Inspector General.

[FR Doc. 2010–32348 Filed 12–23–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date:

11 a.m.–2 p.m., January 12, 2011

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2009, and will expire on August 3, 2011.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the conference call includes: NIOSH 10-Year Review of its Division of Compensation Analysis and Support (DCAS) Program; Linde Ceramics Plant SEC Petition #107 (1954–2006); DCAS Science Issues Update; Subcommittee and Work Group Updates; DCAS SEC Petition Evaluations Update for the February 2011 Advisory Board Meeting; and Board Correspondence.

The agenda is subject to change as priorities dictate.

Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting

and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Road NE., *Mailstop:* E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1–800–CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2010.

Lorenzo J. Falgiano,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2010–32421 Filed 12–23–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6041–NC]

Medicare Program: Solicitation of Comments Regarding Development of a Recovery Audit Contractor Program for the Medicare Part C and D Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This notice presents an approach and requests comments on the provision of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), (collectively known as The Affordable Care Act (ACA)) that requires the expansion of the Recovery Audit Contractor (RAC) Program to the Medicare Part C and D programs.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 25, 2011.

ADDRESSES: In commenting, please refer to file code CMS–6041–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–6041–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services Department of Health and Human Services, Attention: CMS–6041–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to one of the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Moreno (410) 786–1164.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Social Security Act (the Act), every individual with Medicare Parts A and B, except for individuals with end stage renal disease, could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where the beneficiary lived. The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, (Pub. L. 106–113), amended the M+C provisions of the BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554), enacted December 21, 2000.

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Title I of the MMA added new sections 1860D–1 through 1860D–42 to the Act creating the Medicare Prescription Drug Benefit (Part D) program, a landmark change to the Medicare program.

Sections 201 through 241 of Title II of the MMA made significant changes to the M+C program. As directed by Title II of the MMA, we renamed the M+C program the Medicare Advantage (MA) program. We also revised our regulations to include new payment and bidding provisions based largely on risk, to recognize the addition of regional Preferred Provider Organization plans, to address the provision of prescription

drug benefits under the Medicare Part D regulations, and to make other changes.

The MMA, at section 1860D–12(b)(3) of the Act, directed that specific aspects of the MA contracting requirements apply to the prescription drug plan benefit program. Consequently, the processes for contract determinations and the administrative appeal rights in the two programs are virtually identical.

We published the regulations implementing the MA and prescription drug benefit regulations separately, as proposed and final rules, though their development and publication were closely coordinated. On August 3, 2004, we published proposed rules for the MA program (69 FR 46866) and prescription drug benefit program (69 FR 46632). The final regulations implementing both programs, published on January 28, 2005 (70 FR 4588 and 70 FR 4194, respectively), reflect this similarity.

Section 306 of the MMA gave us authority to pilot a new contracting authority designed to detect improper payments. This MMA provision directed the Secretary to demonstrate the use of RACs in identifying Medicare fee-for-service (FFS) underpayments and overpayments and collecting Medicare overpayments. Overpayments and underpayments were identified through a careful review of individual Medicare claims to determine if the claims were medically necessary, correctly coded, and conformed to Medicare payment policy. An important characteristic of the RAC program is that RACs are paid contingency fees based on the overpayments collected from providers and for underpayments identified.

The initial demonstration project ran from 2005 to 2008 in California, New York, Florida, Massachusetts, South Carolina, and Arizona. One of the key objectives of the RAC demonstration program was to identify improper payments in Medicare FFS programs and implement corrective actions that will prevent future improper payments. We designed the demonstration to accomplish two specific goals: To demonstrate whether RACs can identify past improper payments in the Medicare FFS program (as specified in section 306 of the MMA); and to determine whether the RACs can provide information to CMS that could help prevent future improper payments. The demonstration proved to be successful, recovering $992.7 million in gross overpayments, as well as identifying $37.8 million in underpayments that were subsequently paid to providers.

The demonstration results showed the effectiveness of a recovery auditing program in Medicare Part A and Part B. The Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) gave the Secretary until January 1, 2010 to implement the national RAC program nationwide. As of October 29, 2009 the RAC FFS Medicare program was fully implemented. Currently, the RACs are reviewing all claim and provider types upon approval from us. The ACA makes a number of changes to Medicare programs, including Medicare Part C and Part D, to enhance the agency's current efforts to further reduce fraud, waste, and abuse in Medicare programs.

Section 6411(b) of ACA expands the use of RACs to all of Medicare (Title XVIII) amending the existing FFS RAC statute at section 1893(h) of the Act. The amendments to 1893(h) of the Act provide us with general authority to enter into contracts with RACs to identify overpayments and underpayments and recoup overpayments in Medicare Part C and Part D. In addition to the identification of underpayments and overpayments and the recoupment of overpayments, section 6411 of ACA also establishes special rules for Part C and Part D that require RACs to—

- Ensure that each MA plan and Part D plan has anti-fraud plans in place and to review the effectiveness of the anti-fraud plans;
- Examine claims for reinsurance payments to determine whether prescription drug plans submitting such claims incurred costs in excess of the allowable reinsurance costs permitted under the statute; and
- Review estimates submitted by prescription drug plans by private plans with respect to the enrollment of high cost beneficiaries (as defined by the Secretary) and to compare such estimates with the numbers of such beneficiaries actually enrolled by such plans.

II. Proposed Approach and Solicitation of Comments for Section 6411 of the Affordable Care Act

We want to utilize RAC overpayment and underpayment findings to reduce future improper payments in the Medicare Parts C and D programs. With that objective, we are interested in knowing how the RAC findings could be used to more accurately inform Medicare's reimbursement to Part C and Part D plans. Our current experience for utilizing RACs has been limited to the Medicare FFS model. Given the fundamental differences between Medicare FFS and the Medicare Parts C and D programs and since this is the first time we have attempted to expand RACs to other parts of the Medicare program, we are soliciting the views of industry stakeholders on how to best implement the RAC program requirements established in section 6411(b) of the ACA for the Medicare Part C and Part D programs. We recognize that the payment structure in the Medicare Part C and Part D programs is different than in Medicare FFS, so we want to ensure that the RACs are utilized in the most efficient and appropriate manner to return any identified overpayments to the Medicare Trust Fund.

Based on the comments received from this solicitation, we may do further rulemaking on the development and implementation of requirements for RACs in the Part C and Part D programs. We are most interested in receiving comments on the following:

- Methods for RACs to identify underpayments and overpayments in the Medicare Part C and Part D programs.
- Utilizing a phased-in approach for RACs in the Medicare Part C and Part D programs, similar to the development of RACs in the Medicare FFS program.
- The criteria or qualifications necessary to enable a RAC to knowledgeably and appropriately review the payments in Medicare Part C and Part D plans. (We note that in order to meet the qualifications, the Medicare FFS RACs must obtain the services of certified coders, nurses, or therapists, and a Contractor Medical Director.)
- Specific conflict of interest rules that should apply to RACs for the Medicare Parts C and D programs.
- Establishing an oversight entity for Medicare Part C and Part D RAC Issue Approval. We are considering establishing a review board for the Part C and Part D RACs. (We note that FFS RACs have the authority to pursue clear-cut vulnerabilities that can lead to improper payments. However, for more complex vulnerabilities, a review board is utilized. This board decides whether FFS RACs can proceed with the proposed review.)
- Methods for resolving underpayments and how payments related to underpayments identified by the RAC would be implemented in the Part C and Part D programs.
- Potential for allowing Part C and Part D plans to use RACs within their own plans to identify overpayments in its operations. Working through us, the RAC contractor would come to an agreement with interested MA organizations (MAO) to conduct claims review. The claims review would be conducted on claims submitted to the MAO for payment to providers serving the MAO enrollees. The RAC would be paid by the MA organization on a

contingency fee basis and overpayments the MAO recoups as a result of the RAC activities would be retained by the MAO. In approaching this work, the RAC contractor would consider the use of complex and automated review of claims.

• Approaches to implementing the following special rules provisions of section 6411(b) of ACA:

++ We want to utilize RACs to ensure that each Part C and Part D plan has anti-fraud plans in place and to review the effectiveness of those anti-fraud plans. In accordance with section 1893(h) of the ACA, the RACs for the Part C and Part D programs would be paid on a contingency basis, as in the Medicare FFS program. We are interested in the industry's views on how to pay RACs on a contingency basis for reviewing anti-fraud plans in the Part C and Part D programs given there are no recoveries or overpayments resulting from a review of such plans. Should this contingency basis differ from how RACs are paid for reviewing Medicare FFS claims? If so, how?

++ The statute requires that we use RACs to examine claims for reinsurance payments to determine whether Part D plans submitting such claims incurred costs in excess of the allowable reinsurance costs permitted under the statute. Under the Part D statute, Part D plans legitimately incur costs in excess of allowable reinsurance costs during the catastrophic phase of the benefit. In the catastrophic phase of the defined standard benefit, 80 percent of the negotiated price is paid by Federal reinsurance, 15 percent is the responsibility of the sponsor (and is incorporated into their bid for the direct subsidy) and 5 percent is the responsibility of the beneficiary. Prospective reinsurance payments to plans are based on plans' estimates of reinsurance costs and, as required by statute, we reconcile these prospective reinsurance payments for sponsors with actual reinsurance costs. Given this annual reconciliation process, requiring RACs to review the accuracy of the prospective reinsurance payments is less likely to result in recovery of overpayments.

However, we are considering having RACs examine the accuracy and completeness of sponsors' reporting of Direct and Indirect Remuneration (DIR). The DIR information reported by plans includes rebates paid by pharmaceutical manufacturers, as well as other remuneration received by the plan that has the effect of reducing their drug costs, and is used as a factor in our payment calculations to Part D plans. Under-reporting of DIR by plans would overstate plans' drug costs, including in the catastrophic phase of the benefit, and would result in an overpayment to the plan. We are interested in receiving comments on how RACs could be used to review the accuracy and completeness of DIR information provided to us by plans.

++ The statute also requires that we use RACs to review estimates submitted by Part D plans with respect to enrollment of high cost beneficiaries. A Part D sponsor's estimates for the enrollment of high cost beneficiaries may impact the reinsurance estimates in their Part D bids and thus, the prospective reinsurance subsidy payments they receive from us. However, given the structure of the Part D program that requires us to reconcile reinsurance subsidy payments against a Part D sponsor's actual costs, requiring RACs to undertake this activity is less likely to result in recovery of any reinsurance overpayments. However, as noted previously, we are interested in receiving comments on how RACs might be used to identify overpayments and underpayments associated with DIR reporting.

++ We are interested in learning about successful overpayment recoupment models in managed care that may already exist in the commercial sector and to what extent these models are applicable to Part C. Successfully integrating RACs into Part C presents a particular challenge because of how Part C payments are paid. Under the statutory payment formula, plans are paid on a capitated basis. Therefore, the plan, not the government, is at direct risk for any overpayments and underpayments made to its providers. We are interested in learning whether and how other purchasers have identified overpayments and underpayments made by capitated plans and to what extent savings were shared between the plan and the purchaser.

• Any additional information concerning the development of a RAC program in Medicare Part C and Part D and how we can establish the required program elements to protect the Medicare Parts C and D programs from fraud, waste, and abuse.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–32498 Filed 12–23–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Head Start; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has reorganized the Office of Head Start (OHS). This reorganization creates the Grants and Contracts Division and the State Initiatives Division. It renames the Educational Development and Partnership Division, titling it the Education and Comprehensive Services Division. It also renames the Immediate Office of Head Start, the Office of the Director. Additionally, it renames the Policy and Budget Division, the Policy and Planning Division.

FOR FURTHER INFORMATION CONTACT: Yvette Sanchez-Fuentes, Office of the Director, Office of Head Start, 1250 Maryland Avenue, SW., Washington, DC 20024, 202–205–8573.

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KU, Office of Head Start (OHS), as last amended 71 FR 59117–59123, October 6, 2006.

I. Under Chapter, KU, Office of Head Start, delete KU in its entirety and replace with the following:

KU.00 MISSION. The Office of Head Start (OHS) advises the Assistant Secretary for Children and Families on issues regarding the Head Start program (including Early Head Start). OHS develops legislative and budgetary proposals; identifies areas for research, demonstration and developmental activities; presents operational planning objectives and initiatives relating to Head Start and Early Head Start to the Assistant Secretary; and oversees the progress of approved activities. It provides leadership and coordination for the activities of the Head Start program in the ACF Central Office including the Head Start Regional Program Units. OHS represents Head Start in inter-agency activities with other Federal and non-Federal organizations.

KU.10 ORGANIZATION. OHS is headed by a director who reports

directly to the Assistant Secretary for Children and Families. OHS is organized as follows:

Office of the Director (KUA)
Program Operations Division (KUB)
Head Start Regional Program Units (KUBDI–XII)
Education and Comprehensive Services Division (KUC)
Quality Assurance Division (KUE)
Policy and Planning Division (KUF)
Grants and Contracts Division (KUG)
State Initiatives Division (KUH)

KU.20 FUNCTIONS. A. Office of the Director (KUA): The Office of the Director (OD) serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other officials of the Department on the administration of discretionary grant programs providing Head Start Services. The Director provides the direction for OHS based on ACF's and HHS' goals and objectives.

The Deputy Director reports to and assists the Director in carrying out the responsibilities of OHS and performs the duties of the Director when absent. The Deputy Director supervises all six Division Directors in addition to the Budget, Administrative, and Information Systems Teams. The divisions are as follows: Program Operations Division, Education and Comprehensive Services Division, Quality Assurance Division, Policy and Planning Division, Grants and Contracts Division, and State Initiatives Division.

The Administrative Team provides support to OHS, including: (a) Serving as the focal point for operational and long-range planning; (b) functioning as Executive Secretariat for OHS, including managing correspondence, correspondence systems, and electronic mail requests; (c) providing management and administrative services and advice, by coordinating human resources activities, and (d) as appropriate, developing policy and procedures relating to these activities.

The Budget Team (a) Provides leadership in the development of the budget while ensuring consistency with ACF's and the Department's vision and goals, (b) is responsible for budget development and execution, and (c) serves as the primary contact for ACF on all budget development and execution activities related to Head Start. The Information Systems Team (IST) provides support to OHS in providing centralized information systems policy, procedures, standards, and guidelines. IST also provides support through: (a) The oversight of information resources management (IRM) systems, including the Early Childhood Learning and Knowledge Center and Head Start Enterprise System; (b) directing and coordinating OHS' Privacy Act responsibilities; (c) directing and maintaining OHS electronic records and forms management programs; (d) developing long-range IRM plans; (e) developing policies, procurement plans, and budgets for OHS information systems; and (f) serving as the information services liaison to ACF and other agencies to coordinate e-government strategies and policies.

B. Program Operations Division (KUB): The Program Operations Division (POD) advises the OHS Director on all strategic and operational activities related to implementation of the agency's programs in the 12 regions. POD is responsible for the Head Start regional programs administered by the Head Start Regional Program Units which include Region XI, the American Indian and Alaska Native Head Start, and Region XII, the Migrant and Seasonal Head Start.

—Head Start Regional Program Units (KUBDI–XII): The Head Start Regional Program Units are each headed by a Regional Program Manager (RPM) who reports to the Director of the Program Operations Division. The RPM, through subordinate regional staff, in collaboration with program components, is responsible for: (1) Providing program and technical administration of ACF discretionary programs related OHS; (2) collaborating with OHS States Collaboration Projects on all significant policy matters; (3) providing technical assistance to entities responsible for administering OHS programs to resolve identified problems; (4) ensuring that appropriate procedures and practices are adopted; (5) working with appropriate State, local, and tribal officials to develop and implement outcome-based performance measures; and (6) monitoring the programs to ensure their efficiency and effectiveness, and ensuring that these entities conform to Federal laws, regulations, policies, and procedures governing the programs. The Head Start Regional Program Unit serves agencies that provide services to the children and families throughout the United States. The Regional Program Unit (a) guides the day-to-day management of Head Start programs in its jurisdictions; (b) provides technical assistance, resources, and information to the various entities responsible for administering these programs; (c) designates and provides oversight for interim grantees; and (d) represents Head Start to state, county, city, and Tribal governments; grantees; and public and private organizations. Regions I through X are located in the ACF geographical regions. Region XI, American Indian and Alaskan Native Head Start, serves agencies that provide services to the children and families of American Indian and Alaskan Natives. Migrant and Seasonal Head Start is represented by Region XII and serves agencies that provide services to the children and families of migrant and seasonal workers. Regions XI and XII are located in the OHS central office.

C. Education and Comprehensive Services Division (KUC): The Education and Comprehensive Services Division (ECSD) develops and coordinates the content and direction of Head Start program components and provides leadership to improve classroom practice, family engagement and involvement, health and disabilities services and cultural and linguistic responsiveness. The ECSD (1) recommends and establishes policy in the content areas; (2) recommends strategies for achieving quality services; (3) develops regulation, guidance, and other policy materials aimed at improving grantee performance in the content areas; (4) develops areas for research and demonstration activities to improve the quality and levels of services provided to Head Start children; (5) manages discretionary projects; and (6) develops training and technical assistance strategies to improve Head Start programs' performance in specific component areas which include integrated content; health, nutrition, dental, and mental health; parent, family, and community engagement; and quality teaching and learning.

D. Quality Assurance Division (KUE): The Quality Assurance Division (QAD) (1) oversees all major planning and implementation activities to determine Head Start and Early Head Start programs' compliance with all applicable requirements and regulations; (2) conducts data analyses on monitoring outcomes to inform training and technical assistance efforts and policy and guidance development; (3) serves as the liaison to the Office of Inspector General (OIG) for targeted OIG's audits; (4) oversees special agency initiatives such as the erroneous payment study; and (5) manages the OHS Complaint Line.

E. Policy and Planning Division (KUF): The Policy and Planning Division (PPD) provides support and guidance in all matters related to defining and setting policy for the OHS that will affect local Head Start programs and the early childhood community at-large. The Division will strengthen guidance and vision to the

early childhood community, formulate the OHS strategic plans and long-term goals, provide guidance and support with budget planning, oversee development of regulations and other policy issuances, and serve as liaison with ACF and HHS legislative offices on all Congressional matters relating to Head Start.

F. Grants and Contracts Division (KUG): The Grants and Contracts Division (GCD) (1) Oversees matters related to competitive funding opportunities; (2) manages competition, paneling, and selection of national contracts and Head Start and Early Head Start replacement grantees; (3) provides ongoing fiscal oversight of national contracts; (4) serves as the lead for the OHS Program Management and Fiscal Operations Center; and (5) serves as the liaison to the Office of Administration, Divisions of Grants Management and Division of Grants Policy.

G. State Initiatives Division (KUH): The State Initiatives Division (SID) leads and consolidates collaboration efforts to new and expanding Head Start programs. The Division will promote collaborations with state pre-k programs, local child care providers and other national and state early childhood efforts to ensure the sustainability of strong collaborations. The Division serves as the locus for ensuring that mandates in the Head Start Act regarding collaboration are implemented as well as coordination with the U.S. Department of Education and state early childhood entities. The Division will focus on State Advisory Councils, Centers of Excellence, State Collaboration Offices, and the Training and Technical Assistance System.

II. *Continuation of Policy.* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within ACF, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

III. *Delegation of Authority.* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

IV. *Funds, Personnel, and Equipment.* Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of signature.

Dated: December 16, 2010.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2010–32462 Filed 12–23–10; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 25 and 26, 2011, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Main Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/Advisory Committees/default.htm;* under the heading "Resources for You," click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 25, 2011, the committee will discuss and make recommendations regarding regulatory classification of Automated External Defibrillators to either reconfirm to class III (subject to premarket approval application (PMA)) or reclassify to class II (subject to premarket notification (510(k))), as directed by section 515(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360e(i)).

On January 26, 2011, the committee will discuss, make recommendations and vote on information related to the PMA supplement for the RX Acculink Carotid Stent System, sponsored by Abbott Vascular. The RX Acculink is indicated for treatment of patients at high and standard risk for adverse events from carotid endarterectomy who require carotid revascularization and meet the criteria outlined as follows:

1. Patients with neurological symptoms and >50 percent stenosis of the common or internal carotid artery or patients without neurological symptoms and >80 percent (high risk) or >70 percent (standard risk) stenosis of the common or internal carotid artery and

2. Patients must have a reference vessel diameter within the range of 4.0 and 9.0 mm at the target lesion.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 18, 2011. Oral presentations from the public will be scheduled for 1 hour at approximately 1 p.m., immediately following lunch on both days. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on

or before January 10, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 11, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/Advisory Committees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 20, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–32367 Filed 12–23–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Oncologic Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Oncologic Drugs Advisory Committee scheduled for February 9, 2011, is cancelled. This meeting was announced in the **Federal Register** of December 6, 2010 (75 FR 75680). On February 9, 2011, the Oncologic Drugs Advisory Committee was scheduled to discuss biologics license application (BLA) 125377, with the proposed trade name YERVOY (ipilimumab), submitted by Bristol-Myers Squibb Co. The proposed indication (use) for this product is for the treatment of advanced melanoma in patients who have received prior therapy. This meeting has been cancelled because the issues for which FDA was seeking the scientific input of the committee have been resolved.

FOR FURTHER INFORMATION CONTACT: Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *Nicole.vesely@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: December 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–32413 Filed 12–23–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Child Health and Human Development Council.

Date: January 20, 2011.

Open: 8 a.m. to 12:20 p.m.

Agenda: (1) A report of the Director, NICHD; (2) Select Pay Plan Presentation; (3) NIH Peer Review Enhancement Update, (4) NIH Support for Human Embryonic Stem Cell Research Update.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 12:20 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892. (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, 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: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, reserve seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://wwwauthor.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-201005.cfm.* The meeting is partially closed to the public.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: *December 20, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–32464 Filed 12–23–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0094]

National Protection and Programs Directorate; National Infrastructure Advisory Council Meeting

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, January 18, 2011, at the JW Marriott Washington DC, Salon I, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

DATES: The NIAC will meet Tuesday, January 18, 2011, from 1:30 p.m. to 4:30 p.m. The meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac,* or contact the NIAC Secretariat by phone at 703–235–2888 or by e-mail at *NIAC@dhs.gov.*

ADDRESSES: The meeting will be held at the JW Marriott Washington DC, Salon I, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NIAC shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The NIAC will meet to address issues relevant to the protection of critical infrastructure as directed by the President. At this meeting the committee will receive work from a NIAC working group to review, deliberate on, and provide further direction to the working group.

Meeting Agenda:

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of October 19, 2010, Minutes
V. Deliberation: Information Sharing Study
VI. Public Comment
VII. Closing Remarks
VIII. Adjournment

Procedural:

While this meeting is open to the public, participation in the NIAC deliberations is limited to committee members and appropriate Federal Government officials. Discussions may include committee members, appropriate Federal Government officials, and other invited persons attending the meeting to provide information that may be of interest to the Council.

Immediately following the committee member deliberation and discussion period, there will be a limited time period for public comment on listed agenda items only. Relevant public comments may be submitted in writing or presented in person for the Council to consider. Off-topic questions or comments will not be permitted or discussed. In-person presentations will be limited to three minutes per speaker, with no more than 30 minutes for all speakers. Parties interested in making in-person comments must register no less than 15 minutes prior to the beginning of the meeting at the meeting location. Oral comments will be permitted based upon the order of registration; all registrants may not be able to speak if time does not permit. Written comments may be sent to Nancy Wong, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane, Mail Stop 0607, Washington, DC 20528–0607. Written comments must be received by Nancy Wong no later than January 11, 2011, identified by Federal Register Docket Number DHS–2010–0094, and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *E-mail: NIAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 703–603–5098.
- *Mail:* Nancy Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Washington, DC 20528–0607.

Instructions: All written submissions received must include the words "Department of Homeland Security" and the docket number for this action. Written comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NIAC, go to *http://www.regulations.gov.*

Information on Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Nancy Wong, National Infrastructure Advisory Council Designated Federal Officer, Department of Homeland Security, telephone 703–235–2888.

Signed: December 17, 2010.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. 2010–32347 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0166]

Nationwide Use of High Frequency and Ultra High Frequency Active SONAR Technology; Draft Programmatic Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Draft Programmatic Environmental Assessment (PEA) for the Nationwide Use of High Frequency (HF) and Ultra High Frequency (UHF) Sound Navigation and Ranging (SONAR) Technology and Draft Finding of No Significant Impact (FONSI). The USCG is proposing the nationwide use of active SONAR technologies that operate at frequencies of 50 kiloHertz (kHz) and greater from mobile platforms. Active SONAR technology would be used in support of USCG missions to locate, image, and classify submerged/underwater targets of interest (TOI). The PEA is a program-level document that will provide the USCG with management-level analysis of the potential impacts of each alternative on the human and natural environments.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 31, 2011, or reach the Docket Management Facility by that date.

ADDRESSES: The Draft PEA and Draft FONSI have been published and can be downloaded at *http://www.regulations.gov,* docket number USCG–2009–0166. You may submit

comments identified by docket number USCG–2009–0166 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth McDaniel (CG–532), Deputy Division Chief, Maritime Security (Counterterrorism), Coast Guard, by telephone 202–372–2119 or e-mail *Kenneth.L.McDaniel@uscg.mil* for questions regarding the Proposed Action; or Ms. Kebby Kelley (CG–47), Program Manager, USCG National Environmental Policy Act (NEPA)/ Historic Resources, by telephone 202–475–5690 or e-mail *Kebby.Kelley@uscg.mil* regarding NEPA or to request a paper copy. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related materials on the draft PEA and draft FONSI. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2009–0166) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG–2010–1104" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0166" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

Purpose of Proposed Action

The purpose of the Proposed Action is to broaden the USCG's capability to locate and classify underwater threats and other TOIs, and to more safely and effectively accomplish the USCG's missions. TOIs could include combat swimmers/divers; explosives or other offensive devices that could be delivered to underwater hulls, piers, or other shore structures; and objects that have become submerged as a result of a natural or man-made disaster and have the potential to interrupt maritime transportation, trade, commerce, recreational boating, or other maritime activities. The use of HF (50 to 999 kHz) and UHF (1,000 kHz and higher) active SONAR technology would provide USCG operational commanders with the ability to locate, image, and classify underwater threats and other TOIs. HF and UHF SONAR technology could be used in response to events such as: The attacks of September 11, 2001; natural disasters such as Hurricanes Katrina and Rita of 2005; established security areas around high-value vessels, infrastructure, and special security events; and maritime environmental response and search-and-rescue activities.

The USCG needs to broaden its capability to locate, image, and classify submerged/underwater TOIs to safely and efficiently accomplish mission activities. The USCG needs to detect targets in ranges of less than 2 kilometers and needs to operate in harbor, anchorage, channel, and wharf environments, including fresh, brackish, and salt waters, day or night regardless of visibility and in air and water temperatures and thermoclines normal for port/harbor and offshore environments throughout the United States. The USCG's current research of commercially available and reliable technology indicates that the nationwide employment of various HF and UHF active SONAR technology systems would provide the needed capability.

Proposed Use

HF and UHF SONAR use would fall into one of three general categories: (1) Operational missions, (2) training and exercises, and (3) research and development. All SONAR use would be of relatively short-term duration (typically less than a week, unless otherwise required for an emergency or disaster). Regardless of the category, such use would only be for the amount of time necessary to complete the mission objectives. In no case is the USCG proposing long-term deployments of SONAR equipment in fixed positions (unless required by an emergency or disaster). In general, the duration of SONAR use would be from minutes to as long as several days. Typically, the duration of most deployments would be less than a week; however, for environmental disasters such as the Deepwater Horizon oil spill, SONAR equipment could be used on-site until the emergency has ended. An example of a high-priority nonemergency operational mission is the anti-swimmer SONAR system that would provide security zone protection during a two-day special event. Once the event has

concluded, the system would be shut down and removed.

The USCG proposes to use HF and UHF SONAR technology from mobile platforms nationwide. Mobile platforms include ships, boats, remotely operated vehicles (ROVs), and autonomous underwater vehicles (AUVs). Additionally, SONAR could be towed by a boat (*i.e.,* a torpedo-shaped "towfish"), lowered from a boat on a pole, or temporarily fixed to a pier or a pile. Impacts on the seafloor from ROV and AUV operations would not be significant. ROVs would be used pierside or at a location appropriate for conducting vessel inspections. An appropriate location for inspection would be at a water depth that would preclude seafloor disturbance. As such, ROVs and AUVs would usually be suspended in the water column and would rarely contact the seafloor. Typically, ROVs and AUVs would be used in open, navigable waterways or safe anchorages. However, an ROV or AUV might contact the seafloor if there is a suspected threat on the seafloor that needs to be investigated; such contact would be short-term and transient in nature.

Although selected HF and UHF SONAR systems could be employed by any USCG unit to accomplish a mission, the USCG does not intend to permanently equip or outfit every USCG unit with SONAR capability. The HF and UHF SONAR systems selected could be powered using existing USCG power supplies such as public electrical distribution grids, shipboard electrical power, or portable generators (e.g., Honda 1,000-watt generator).

Scope of the Programmatic Environmental Assessment

The scope of the PEA focuses on potential impacts associated with the anticipated use of the HF and UHF SONAR systems to accomplish USCG mission activities. The PEA addresses potential impacts on living marine resources based on these operating criteria. Supplemental, follow-on NEPA documentation or additional consultations with appropriate resource authorities would be required if site-specific, non-mobile operating scenarios or newly developed technologies fall outside of the scope of this assessment. The scope of the PEA encompasses geographic locations where the systems are expected to operate.

The SONAR technology systems would be available for use by the USCG within all areas under USCG jurisdiction along the U.S. continental coastline, the Great Lakes, Hawaii, Alaska, United States territories, and inland operating areas. The inland operating areas would include existing harbor infrastructure and adjacent inland waters, including the St. Lawrence Seaway, the Great Lakes, and western and inland river systems. The offshore operating areas would include areas up to 12 nautical miles offshore and most areas shoreward. Normal locations for deployments would include the ports and waterways of the nation's top tiered militarily and economically significant ports. Emergency use of HF and UHF SONAR technology during times of extreme weather, such as hurricanes, could be required for onshore areas that become inundated by floodwater.

Public input is important to the preparation of the Final PEA. Your concerns and comments regarding the nationwide use of HF and UHF active SONAR technology and the possible environmental impacts are important to the USCG, and we encourage you to share them with us.

Authority: This notice is issued under authority of 42 U.S.C. 4321, *et seq.,* and 40 CFR 1508.22.

Dated: December 14, 2010.

Michael Mohn,

Captain, U.S. Coast Guard, Chief, Office of Terrorism and Defense Operations.

[FR Doc. 2010–32465 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–124]

Emergency Comment Request; Indian Housing Block Grants (IHBG) Program Reporting; Notice of Submission of Proposed Information Collection to OMB; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. This is a correction from 14 days to 30 days.

DATES: *Comments Due Date:* January 26, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name or OMB approval number (2577–0218) and should be sent to: Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: Ross.A.Rutledge@omb.eop.gov*; *Fax:* 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This request for emergency processing is essential in order to implement the statutory changes to NAHASDA for fiscal year 2012. A standard PRA review would delay implementation of the revised IHP/APR until fiscal year 2013. The agency cannot reasonably comply with the normal clearance procedures under this part because the statutory changes accelerate the submission of the IHP. With implementation of the statutory changes, the IHP is due 75 days prior to the beginning of the grantee's fiscal year. For grantees with a fiscal year beginning October 1, 2011, the revised IHP will be due July 16, 2011, rather than July 1, 2012. The emergency clearance processing of the revised PRA is needed in order to provide IHBG recipients with sufficient time to complete the IHP prior to submission and provide training to all IHBG recipients on the revised form. Therefore, the use of the normal clearance procedures is reasonably likely to prevent or disrupt the collection of information and is reasonably likely to cause a statutory deadline to be missed.

This Notice also lists the following information:

Title of Proposal: Indian Housing Block Grants (IHBG) Program Reporting.

Description of Information Collection: Recipients of Indian Housing Block Grant (IHBG) funds provide plans for low-income housing programs in their communities and submit quarterly reports on funds drawn. Recipients may submit information to correct and/or challenge data used in annual housing assistance formula allocations. Additional requirements have been added: Recipients may purchase insurance from a nonprofit insurance

entity approved by HUD. These entities must submit annual audit and actuarial reviews to HUD annually.

OMB Control Number: 2577–0218.

Agency Form Numbers: Form 52735 and 52735–AS Combined, HUD–272–I, HUD–4117, HUD–4119.

Members of Affected Public: State, Local, and Tribal.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 366, the estimated number of respondents is 144, the frequency response is one time, and the estimated number of hours per response is 366.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 20, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–32461 Filed 12–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–23]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Chicago Housing Authority for the purchase and installation of through-the-wall air conditioners, floor-mounted water closets, and low voltage electrical components at the Dearborn Homes project.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on November 24, 2010, upon request of the Chicago Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Dearborn project. The exception was granted by HUD on the basis that the relevant manufactured goods (through-the-wall air conditioners, floor-mounted water closets, and low voltage electrical components) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: December 17, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–32446 Filed 12–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5436–N–02]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC 20410–8000; telephone (202) 708–2224. A Telecommunications Device for Hearing- and Speech-Impaired Individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board (Board). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board from April 15, 2010 to July 2, 2010.

I. Settlement Agreements, Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, Reprimands, and Administrative Payments

1. Alethes, LLC, Lakeway, TX [Docket No. 09–9891–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw Alethes, LLC's (Alethes) FHA approval for a period of three years and impose a $7,500 civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Alethes originated an FHA mortgage after termination of its origination approval agreement; Alethes failed to comply with HUD's annual recertification requirements by failing to

submit acceptable audited financial statements.

2. Atlantic Pacific Mortgage Corporation, Pembroke Pines, FL [Docket No. 10–1607–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately and permanently withdraw Atlantic Pacific Mortgage Corporation's (Atlantic) FHA approval.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Atlantic retained and/or employed an owner, director, officer and/or employee who had been indicted for a criminal offense.

3. First Rate Capital Corporation, Melville, NY [Docket No. 10–1001–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw First Rate Capital Corporation's (First Rate) FHA approval for a period of one year.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: First Rate failed to notify HUD of the closure of its home office location.

4. Gold Star Home Mortgage, LLC, St. Joseph, MO [Docket No. 10–1686–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw Gold Star Home Mortgage, LLC's (Gold Star) FHA approval for a period of one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Gold Star failed to notify HUD of an action taken against it by the state of Missouri; Gold Star submitted a false certification to HUD on its Annual Certification Report.

5. Marathon Financial Corporation, Southfield, MI [Docket No. 09–9889–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately and permanently withdraw Marathon Financial Corporation's (Marathon) FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Marathon retained and/or employed an owner, director, officer and/or employee who had been indicted for a criminal offense; Marathon failed to submit its annual recertification fee, Yearly Verification Report, and acceptable audited financial statements.

6. Nationwide Equities Corporation, Mahwah, NJ [Docket No. 09–9916–MR]

Action: On April 15, 2010, the Board voted to impose a $20,500 civil money penalty against Nationwide Equities Corporation (Nationwide).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Nationwide failed to implement a Quality Control (QC) plan and conduct QC reviews in a timely manner.

7. Precision Financial, Inc., Syosset, NY [Docket No. 09–9897–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw Precision Financial, Inc.'s (Precision) FHA approval.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Precision failed to notify HUD that it had voluntarily surrendered its state license to originate mortgages.

8. Sacramento Mortgage, Inc., Sacramento, CA [Docket No. 08–8097–MR]

Action: On April 15, 2010, the Board voted to issue a letter of reprimand and impose a $7,500 civil money penalty against Sacramento Mortgage, Inc. (Sacramento).

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Sacramento used advertisements containing inaccurate and misleading FHA program information.

9. Tucson Mortgage Company, LLC, Tucson, AZ [Docket No. 10–1602–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw Tucson Mortgage Company, LLC's (Tucson) FHA approval and impose a $7,500 civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Tucson failed to notify HUD of a Cease and Desist order issued against it by the Arizona Department of Financial Institutions; Tucson failed to notify HUD of the surrender of its licenses.

10. Turbo International Corporation d/b/a USA Mortgage, Las Vegas, NV [Docket No. 10–1599–MR]

Action: On April 15, 2010, the Board approved an administrative action to immediately withdraw Turbo International Corporation's d/b/a USA Mortgage (Turbo) FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Turbo failed to notify HUD that its state license had expired; Turbo failed to submit its annual certification, recertification fee, and acceptable audited financial statements.

11. 1st Alliance Mortgage LLC, Houston, TX [Docket No. 09–9624–MR]

Action: On April 16, 2010, the Board accepted 1st Alliance Mortgage LLC's (1st Alliance) offer to settle by paying a civil money penalty in the amount of $150,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: 1st Alliance engaged in prohibited branch arrangements; 1st Alliance made false certifications to HUD on loan application forms HUD–92900–A in 708 instances; 1st Alliance failed to implement and maintain a Quality Control (QC) plan and conduct QC reviews; 1st Alliance failed to report compensation to employees on IRS form W–2; 1st Alliance charged unallowable and/or unearned duplicative fees to borrowers; 1st Alliance failed to ensure that fees paid outside of closing were listed on the HUD–1 Settlement Statement.

12. Polaris Home Funding Corporation, Grandville, MI [Docket No. 09–9915–MR]

Action: On May 20, 2010, the Board accepted Polaris Home Funding Corporation's (Polaris) offer to settle by paying a civil money penalty in the amount of $44,000 and indemnifying FHA on seven loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Polaris violated HUD/FHA staffing requirements; Polaris had numerous loan origination and underwriting deficiencies.

13. Viewpoint Bank, Plano, TX [Docket No. 10–1019–MR]

Action: On May 20, 2010, the Board approved an administrative action to assess a $505,400 administrative payment against Viewpoint Bank (Viewpoint).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Viewpoint had numerous loan origination and underwriting deficiencies; Viewpoint failed to ensure that its employees worked for Viewpoint exclusively, including failure to ensure that employees did not have outside employment in a related field.

14. Great Country Mortgage Bankers Corporation, Coral Gables, FL [Docket No. 10–1129–MR]

Action: On May 20, 2010, the Board approved an administrative action to permanently withdraw Great Country Mortgage Bankers Corporation's (Great Country) FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Great Country failed to conduct targeted Quality Control reviews; Great Country had numerous loan origination and underwriting deficiencies; Great Country failed to ensure that their employees worked for Great Country exclusively; Great Country failed to address discrepancies prior to approval of the insurance endorsement.

15. WR Starkey Mortgage, LLP, Plano, TX [Docket No. 10–1573–MR]

Action: On May 20, 2010, the Board voted to impose a $223,000 civil money penalty against WR Starkey Mortgage, LLP (WR Starkey) and accept WR Starkey's offer to indemnify HUD on 32 mortgages. WR Starkey also agreed to reimburse HUD for 11 of the 32 mortgages that resulted in claims in the amount of $756,406.76.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: WR Starkey had numerous loan origination and underwriting deficiencies; WR Starkey failed to timely remit Upfront Mortgage Insurance Premiums; WR Starkey allowed a Credit Watch terminated branch to originate loans; WR Starkey failed to ensure that loans met property eligibility requirements; WR Starkey failed to comply with property flipping guidelines; WR Starkey failed to ensure that construction-to-permanent mortgage program requirements were met.

17. Birmingham Bancorp Mortgage Corporation, West Bloomfield, MI [Docket No. 10–1792–MR]

Action: On June 17, 2010, the Board approved an administrative action to immediately withdraw Birmingham Bancorp Mortgage Corporation's (BBMC) FHA approval for a period of five years. On July 2, 2010, the Board terminated the withdrawal action and accepted BBMC's settlement offer of $815,913.13 (this amount included principal and interest totaling $770,913.13 for indemnification on 16 loans and a civil money penalty of $45,000).

Cause: The Board took the original action based on the following violations of HUD/FHA requirements alleged by HUD: BBMC failed to honor the terms of six executed indemnification agreements when BBMC failed to remit payment.

18. Countrywide Home Loans, Inc., Calabasas, CA [Docket No. 09–9846–MR]

Action: On June 17, 2010, the Board accepted a settlement offer from Countrywide Home Loans, Inc. (Countrywide) to pay a civil money penalty of $141,500, buy down the principal on loans totaling $93,263.02, indemnify HUD/FHA on loans, and surrender its FHA approval. In addition, Countrywide's parent company, Bank of America, will maintain its FHA approval and honor the indemnification agreements.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Countrywide had loan origination and underwriting deficiencies; Countrywide failed to provide complete loan origination files.

19. Best Interest Rate Mortgage Company, LLC, Haddon Township, NJ [Docket No. 10–1879–MR]

Action: On June 17, 2010, the Board approved an administrative action to permanently withdraw Best Interest Rate Mortgage Company, LLC's (BIRMCO) FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: BIRMCO failed to notify HUD that it had been excluded from doing business in Idaho and Colorado; BIRMCO improperly used a simulated government form implying endorsement by FHA; BIRMCO failed to obtain required state licenses to operate in the States of Idaho and Colorado.

20. Housing Solutions, Inc., Scottsdale, AZ [Docket No. 10–1608–MR]

Action: On June 17, 2010, the Board approved an administrative action to permanently withdraw Housing Solutions, Inc.'s (HSI) FHA approval.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: HSI failed to notify HUD of the closure of its home office and that it is no longer in business.

21. Action Mortgage Corporation, Cranston, RI [Docket No. 10–1855–MR]

Action: On June 17, 2010, the Board accepted a settlement offer from Action Mortgage Corporation (AMC) to pay a civil money penalty of $2,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: AMC misused the official HUD seal on its Web site.

22. Equity Source Home Loans, LLC, Morganville, NJ [Docket No. 10–1719–MR]

Action: On June 17, 2010, the Board voted to impose a $7,000 civil money penalty against Equity Source Home Loans, LLC (Equity Source).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Equity Source misused the names of FHA and HUD, misused the FHA seal, and disseminated a simulated government form implying HUD/FHA or government endorsement.

23. NFM, Inc., Linthicum Heights, MD [Docket No. 10–1712–MR]

Action: On June 17, 2010, the Board voted to impose a $5,000 civil money penalty against NFM, Inc. (NFM).

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: NFM misused the name and seal of the FHA and disseminated advertisements implying HUD/FHA endorsement.

24. Silver Key Lending & Investment Group, Downers Grove, IL [Docket No. 10–1848–MR]

Action: On June 17, 2010, the Board voted to impose a $3,500 civil money penalty against Silver Key Lending & Investment Group (Silver Key).

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Silver Key misused the seal of the FHA and disseminated advertisements implying HUD/FHA endorsement.

25. Access Mortgage Corporation, New Haven, CT [Docket No. 09–9438–MR]

Action: On June 17, 2010, the Board accepted a settlement offer from Access Mortgage Corporation (Access) to pay a civil money penalty of $3,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Access failed to notify HUD/FHA within ten business days of a change in its "doing business as" name.

26. American Advisors Group, Irvine, CA [Docket No. 10–1822–MR]

Action: On June 17, 2010, the Board accepted a settlement offer from American Advisors Group (AAG) to pay a civil money penalty of $3,500.

Cause: The Board took this action based on the following violation of

HUD/FHA requirements alleged by HUD: AAG's advertisements misrepresented HUD's Home Equity Conversion Mortgage program.

27. Acceptance Capital Mortgage Corporation, Spokane, WA [Docket No. 09–9608–MR]

Action: On May 20, 2010, the Board accepted a settlement offer from Acceptance Capital Mortgage Corporation (Acceptance) to pay a civil money penalty of $14,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Acceptance allowed a separate legal entity to operate as a branch of Acceptance; Acceptance allowed loans to be originated by loan officers who were also employed by other companies in the real estate industry.

28. Oxford Lending Group, L.P., Columbus, OH [Docket No. 10–1687–MR]

Action: On June 17, 2010, the Board accepted a settlement offer from Oxford Lending Group, L.P. (Oxford) to pay a civil money penalty of $3,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Oxford improperly used a simulated government form implying endorsement by FHA or the Government.

II. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to immediately withdraw FHA approval for a period of one year for each of the lenders listed below.

Cause: The Board took this action because the lenders were not in compliance with the HUD's annual recertification requirements.

1. American Home Advisors, Inc., Dana Point, CA
2. At Home Mortgage Brokers, Inc., Phoenix, AZ
3. Bridge Mortgage, Inc., Villa Rica, GA
4. Coastline Mortgage Consultants, LLC, Wilmington, NC
5. Denton County Mortgage Corp., Tyler, TX
6. Fidelity Homes and Loans, Inc., Federal Way, WA
7. Legacy Mortgage LLC, Green Bay, WI
8. Oceanfront Mortgage, Inc., San Diego, CA
9. Alabama Home Mortgage Lending, Birmingham, AL
10. C Bass ABS LLC, New York, NY
11. Castle Home Mortgage Corp., Union, NJ
12. City State Bank, Central City, IA
13. CoFinancial, Inc., Milford, MI
14. Credit Based Asset Servicing, New York, NY
15. DMI Funding, Inc. (Title I), Boise, ID
16. DMI Funding, Inc. (Title II), Boise, ID
17. Gordon Lending Corporation, Dublin, OH
18. Great Harbor Financial Service, Guilford, CT
19. HBM No. One, LLC, Burlington, NC
20. Integrity One Mortgage, Inc., Penns Grove, NJ
21. Mortgage Process Center, Fair Oaks, CA
22. NVX, LLC, Falls Church, VA
23. Powell Financial Services, Inc., San Diego, CA
24. Prosperity Bank St. Augustine, St. Augustine, FL
25. Quickdraw Real Estate Services, Inc., Mill Creek, WA
26. Solutions Financial Group, Inc., Tukwila, WA
27. Three Rivers Financial Services, Inc., Fort Wayne, IN
28. Trinity Financial, Inc., Verona, PA
29. 1st Integrity Mortgage, Inc., Towson, MD
30. Alliance Financing Mortgage Corporation, Mount Prospect, IL
31. American Mortgage Group LLC, Humble, TX
32. American Mortgage Solutions LLC, Burr Ridge, IL
33. Amerinet Financial LLC, Upper Marlboro, MD
34. Apex Funding Inc., Santa Ana, CA
35. Baycal Financial Corporation, Burlingame, CA
36. Benchmark Mortgage Corporation, Schaumburg, IL
37. Broadway Federal Savings and Loan, Los Angeles, CA
38. Building and Loan Mortgage Company, Lenexa, KS
39. C Bass Funding LLC, New York, NY
40. C Bass Funding X LLC, New York, NY
41. Capital Mortgage LLC, Miami, FL
42. Capitol City Bank & Trust Company, Atlanta, GA
43. CCSF LLC, Henderson, NV
44. Champion Mortgage LLC, Corpus Christi, TX
45. Clayson-Mitchell Mortgage Services LC, Salt Lake City, UT
46. Columbia First Mortgage Inc., Battle Ground, WA
47. Community Finance Group Inc., Crystal, MN
48. Community Resource Bank, N.A., Columbia, SC
49. Consumer Lending Inc., Verona, NJ
50. Creative Mortgage Services Inc., Martinez, GA
51. CWA Financial Services Inc., Milledgeville, GA
52. Design Development Mortgage LLC, Fort Collins, CO
53. Direct Mortgage Inc., Norcross, GA
54. Dynamic International Funding, Denver, CO
55. East Shore Mortgage LLC, Madison, CT
56. EDVA Realty Services Inc., Tarzana, CA
57. Element Financial, LLC, Suwanee, GA
58. Ellis Mortgage Company, Poplar Grove, IL
59. E-Tek Capital LLC, Gibbsboro, NJ
60. Emcore Mortgage, LLC, Atlanta, GA
61. Ethical Mortgage Lending LLC, Grove City, OH
62. Evergreen Pacific Mortgage Inc., Eugene, OR
63. Fairfield Financial Mortgage Group, Danbury, CT
64. Firstbank—West Branch, West Branch, MI
65. First Boulder Valley Bank, Boulder, MT
66. First Choice Mortgage Corporation, Stafford, VA
67. First Choice Mortgage Services LLC, Memphis, TN
68. First Primacy Mortgage Corporation, Bel Air, MD
69. First Sierra Mortgage Inc., Sacramento, CA
70. Focus Financial and Mortgage Corporation, Wauconda, IL
71. Fortes Financial Inc., San Diego, CA
72. Founders Mortgage Inc., Edmond, OK
73. Genesis Mortgage Company LLC, Kingwood, TX
74. Gordon Lending Corporation, Dublin, OH
75. Hamilton Mortgage Group LLC, Ridgefield, CT
76. Heights Mortgage Connection Inc., Harker Heights, TX
77. Hometown Community Bank, Braselton, GA
78. Interstate Capital Corporation, Coral Springs, FL
79. JBJ LLC, Henderson, NV
80. Keystone Mortgage Inc., Puyallup, WA
81. LAA Enterprises Inc., Lakeland, FL
82. Lend Select Mortgage, LLC, Mount Laurel, NJ
83. Lowery Mortgage Inc., Cornelius, NC
84. Madison Funding Inc., Baltimore, MD
85. Magnolia Homes Loans, Inc., Oxnard, CA
86. Maximum Mortgage Concepts, West Bridgewater, MA
87. MBS Mortgage Company LLC, Wixom, MI
88. McLaughlin Financial Inc., Salem, MA
89. Metropolitan Mortgage Inc., Providence, RI
90. MidAmerica Mortgage Corporation, New Hope, MN

91. MMA Mortgage Investment Corporation, Tampa, FL
92. Mortgage Connection of Evansville Inc., Evansville, IN
93. Mortgage Pros Ltd, Elmhurst, IL
94. Namorex, LLC, Wilton, NH
95. New Hope Community Development Federal Credit Union, Birmingham, AL
96. North Florida Funding Inc., Jacksonville, FL
97. Northpark Community Credit Union, Indianapolis, IN
98. Old Providence Mortgage Company, Farmington, UT
99. Paraiso LLC, Atlanta, GA
100. Paramount Bank, Lexington, KY
101. Pledged Property IV LLC, New York, NY
102. Popular Mortgage Corp., (Title I), Hialeah, FL
103. Popular Mortgage Corp., (Title II), Hialeah, FL
104. Price Financial Services Inc., Rochester, MN
105. Primary Access America Corporation, Mission Viejo, CA
106. Prime Alliance Bank, Wood Cross, UT
107. Prime Source Mortgage, Inc., Scottsdale, AZ
108. Priority Mortgage, Inc., Wayne, IN
109. Pronto Mortgage Lenders Corp., Hialeah Gardens, FL
110. Provident Capital Mortgage, Inc., Cranston, RI
111. R & S Financial Inc., Plymouth, MA
112. Residential Mortgage Services Inc. (Title I), Lexington, KY
113. Residential Mortgage Services Inc. (Title II), Lexington, KY
114. Results One Mortgage Corp., Elmhurst, IL
115. Samsara Mortgage Services Inc., Oakbrook, IL
116. San Juan Mountains Credit Union, Montrose, CO
117. Schyndel Investments Inc., Layton, UT
118. Security Mortgage Corporation, Phoenix, AZ
119. Silver Sierra Mortgage Inc., Cameron Park, AZ
120. Signature Mortgage, LLC, Huntsville, AL
121. Source 1 Capital Mortgage Corporation, Clifton, NJ
122. South Ross Mortgage LLC, Lancaster, SC
123. Trinity Mortgage Company Inc., Fort Wayne, IN
124. United Financial Management Group Inc., Clarks Summit, PA
125. VIP Mortgage Corporation, Danvers, MA
126. Wakefield Lending Company LLC, Raleigh, NC
127. Wonder State Mortgage Inc., Little Rock, AR

III. Lenders That Failed to Timely Meet Requirements for Annual Recertification of HUD/FHA Approval and Have Cured

Action: The Board voted to give the lenders below an opportunity to settle. The settlements required each lender to pay a $7,500, $3,500, or $1,000 civil money penalty without admitting fault or liability.

Cause: The Board took this action because the lenders failed to timely comply with the HUD's annual recertification requirements, however, they are now in compliance.

1. 3rd Generation Mortgage, LLC, Bayville, NJ, 10–1930–MRT
2. American Capital Mortgage Bankers, Ltd., Floral Park, NY, 10–1348–MRT
3. Apex Mortgage, LLC, Meridian, ID, 10–1298–MRT
4. Capital Funding and Mortgage Group, Inc., Suwanee, GA, 10–1478–MRT
5. Centrue Bank, Ottawa, IL, 10–1416–MRT
6. Citizens State Bank, New Baltimore, MI, 10–1473–MRT
7. CLO Funding Corporation, Piscataway, NJ, 10–4448–MRT
8. Empire Financial Services Inc., Rockville, MD, 10–1521–MRT
9. Golden Mortgage Corporation, Bridgewater, NJ, 10–1485–MRT
10. Home Mortgage Solutions, LLC, Midlothian, VA, 10–1247–MRT
11. Home Owners Financial Services, Los Angeles, CA, 10–1353–MRT
12. LA Mortgage Services, Inc., Clarks Green, PA, 10–1045–MRT
13. Landon Financial, Inc., Margate, FL, 10–1258–MRT
14. Lighthouse Home Loans, Inc., Salem, OR, 10–1495–MRT
15. Lincoln Financial, Inc., Wayne, NJ, 10–1379–MRT
16. Mortgages Unlimited, Inc., Liberal, KS, 10–1357–MRT
17. PC Funding, Inc., Cerritos, CA, 10–1924–MRT
18. Plum Creek Funding, Inc., Parker, CO, 10–1519–MRT
19. Raustin Mortgage Services LLC, Grandville, MI, 10–1214–MRT
20. RJ Financial Services, Inc., San Antonio, TX, 10–1488–MRT
21. Robert P. Lenz & Associates, Inc., Matthews, NC, 10–1569–MRT
22. Seaside Home Mortgage, Inc., Sebastian, FL, 10–1568–MRT
23. Sun Mortgage Corp. of Missouri, Inc., Saint Louis, MO, 10–1552–MRT
24. Terra Ferma Mortgage, Inc., Houston, TX, 10–1900–MRT
25. Your Money Center, LLC, Hartwell, GA, 10–1449–MRT
26. AAA Financial Corp., Coral Springs, FL, 10–1932–MRT
27. Advantis Credit Union, Portland, OR, 10–1933, MRT
28. American Mortgage Group, Inc., Shawnee, OK, 10–1934, MRT
29. Becker Real Estate Services, Inc., Lynbrook, NY, 10–1935–MRT
30. Carson Bank (f/k/a Mulvane State Bank), Mulvane, KS, 10–1936–MRT
31. CBRE HMF, Inc., Atlanta, GA, 10–1937–MRT
32. Coral Mortgage Bankers Corporation, Chesterfield, MO, 10–1938–MRT
33. Constitution Trust Mortgage Corp., Plainville, MA, 10–1906–MRT
34. Custom Equity Mortgage, LLC, St. Louis, MO, 10–1939–MRT
35. DATCU Credit Union, Denton, TX, 10–1940–MRT
36. Financial Dynamics Funding Corp., Jericho, NY, 10–1941–MRT
37. Great Florida Lending, Inc., Miami, FL, 10–1942–MRT
38. Heritage Bank and Trust, Columbia, TN, 10–1943–MRT
39. Home First Mortgage, Birmingham, AL, 10–1944–MRT
40. Infinity Lending Group, Tustin, CA, 10–1053–MRT
41. IZT Mortgage, Inc. d/b/a Ameritech Mortgage, Walnut Creek, CA, 10–1945–MRT
42. Lexington Investment Mortgage Co., Lexington, KY, 10–1907–MRT
43. Lincoln Mortgage Associates, LLC, Lansdale, PA, 10–1946–MRT
44. Metropolitan Mortgage Broker, LLC, Philadelphia, PA, 10–1947–MRT
45. Mortgage 1st, Inc., Ridgeland, MS, 10–1948–MRT
46. Mortgage Options of America, Inc., Winchester, MA, 10–1949–MRT
47. Northern Funding Corporation, Clifton Park, NY, 10–1412–MRT
48. Organization Matters, Inc., Apple Valley, CA, 10–1950–MRT
49. PLB Lending LLC, Washington, MI, 10–1951–MRT
50. Valley Financial, Inc., Corning, CA, 10–1953–MRT
51. Wellington Funding Group LLC, Scottsdale, AZ, 10–1955–MRT
52. WF and K Mortgage, Inc., Dunmore, PA, 10–1956–MRT
53. ACE Cash Express Home Loans LLC, Irving, TX, 10–1969–MRT
54. Advocate Equities Corp., Brooklyn, NY, 10–1427–MRT
55. Alliance Capital Corporation, Oklahoma City, OK, 10–1970–MRT
56. American Security Financial Corporation, Modesto, CA, 10–1511–MRT
57. Ameristate Bancorp Inc., Youngstown, OH, 10–1971–MRT
58. Associated Capital Resources Inc., Phoenix, AZ, 10–1616–MRT
59. Assured Funding Corporation, Jackson, TN, 10–1248–MRT
60. Bank of Bridger, Bridger, MT, 09–9138–MRT

61. Boulder West Financial Services, Lafayette, CO, 10–1428–MRT
62. Central Bank and Trust, Lander, WY, 10–1471–MRT
63. Creative Mortgage Partners LLC, Maplewood, MN, 09–9128–MRT
64. Crossline Capital Inc., Irvine, CA, 10–1481–MRT
65. Elite Financial Investments Inc., Oakbrook, IL, 10–1122–MRT
66. Enterprise Community Investment Inc., Columbia, MD, 09–9137, MRT
67. First American Dream Mortgage Inc., Chicago, IL, 10–1360–MRT
68. First Financial Bank N.A., Hamilton, OH, 09–9204–MRT
69. First Mortgage Group LLC, Woodstock, GA, 10–1972–MRT
70. First Star Funding Corp., Olympia Fields, IL, 10–1707–MRT
71. Freedom One Funding Inc., Clifton Park, NY, 10–1557–MRT
72. FRMP Inc., Loveland, CO, 10–1431–MRT
73. Grow Mortgage Company, LLC, Franklin, KY, 10–1368–MRT
74. HD Legacy Inc., Placentia, CA, 10–1061–MRT
75. Home Worx Mortgage LLC, Edmond, OK
76. KBA Financial Group LLC d/b/a First Homeland Mortgage, South Orange, NJ 09–9812–MRT
77. Midwest Mortgage Partners LLC, Clive, IA, 10–1466–MRT
78. Mortgage Strategies Inc., Benicia, CA, 10–1973–MRT
79. Mountain State Lending Associates, Inc., Weirton, WV, 10–1903–MRT
80. Nationside Mortgage Inc., Gaithersburg, MD, 10–1114–MRT
81. Potomac Mortgage Capital Inc., Great Falls, VA, 09–9857–MRT
82. Prestige Home Mortgage LLC, Owings Mills, MD, 10–1426–MRT
83. Professional Financial Mortgage Inc., Southfield, MI, 10–1314–MRT
84. Rowlett Mortgage Lending Ltd., Garland, TX, 10–1338–MRT
85. Rudkin Enterprises LLC, Little Rock, AR, 10–1232–MRT
86. Society Financial Corp., Farmington, CT, 10–1419–MRT
87. Superior Lending Associates LC, Orem, UT, 10–1974–MRT
88. Wilmington Finance Inc., Plymouth Meeting, PA, 10–1975–MRT

Dated: *December 20, 2010.*

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–32443 Filed 12–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5420–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2010

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2010, and ending on September 30, 2010.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2010.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2010, through September 30, 2010. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in

time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2010) before the next report is published (the fourth quarter of calendar year 2010), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: *December 17, 2010.*

Helen R. Kanovsky,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2010 Through September 30, 2010

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The city of Pocatello, Idaho (City) purchased a foreclosed property located at 147 and 147 A/B Roosevelt Avenue using non-HUD funds before the City entered into a Memorandum of Agreement with the State Historic Preservation Office and Advisory Council on Historic Preservation, and before the City completed the environmental review. This was done in order to not lose the property, since the State Historic Preservation Office determined that the rear structure was eligible for listing in the National Register for Historic Places and mitigation would be required.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: September 28, 2010.

Reason Waived: The waiver was granted based on the following findings: the above project would further the HUD mission and advance HUD program goals to eliminate blight and develop affordable housing; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith; no HUD funds were committed; and, based on the environmental assessment and the HUD field inspection, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 91.10(b).

Project/Activity: The city of Bradenton, FL (City) requested a waiver of 24 CFR 91.10(b) because it sought to change its program year start date from May 1 to October 1 for the 2010 program year, effectively lengthening its 2009 program year.

Nature of Requirement: HUD's regulation at 24 CFR 91.10(b) requires that grantees notify HUD in writing at least two months before the date the program year would have ended if the program year had not been lengthened or two months before the end of a proposed shortened program year.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: August 9, 2010.

Reason Waived: Since the City wanted to lengthen its 2009 program year, the City was required to notify HUD in writing of its intent to do so no later than February 28, 2010. The City notified HUD on March 22, 2010, of its intent to lengthen its 2009 program year, and did not request a regulatory waiver of the missed deadline until July 15, 2010. HUD granted the waiver because the City advised that it sought to lengthen its 2009 program year so that it could synchronize future CDBG program year start dates, beginning with program year 2010, to coincide with the City's budget year.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 402–2184.

• *Regulation:* 24 CFR 91.105(c)(2).

Project/Activity: The city of New Orleans, LA (City) received approximately $1,042,000 in Community Development Block Grant (CDBG) funds pursuant to Section 106(c)(4) of the Housing and Community Development Act of 1974 (HCDA) that were scheduled to expire at the end of Fiscal Year 2010. This statutory provision permits grantees affected by a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to receive funds that become available as a result of actions under sections 104(e) or 111 of the HCDA. The receipt of funds constituted a substantial amendment to the City's consolidated plan, which required that citizens be provided no less than 30 days to review and comment on this substantial amendment to the consolidated plan prior to implementation of activities assisted with such funds.

Nature of Requirement: HUD's regulation at 24 CFR 91.105(c)(2) requires that citizens must be provided with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan of the jurisdiction in which the citizens reside. The citizen participation plan requires that citizens be given no less than 30 days to comment on substantial amendments before they are implemented. The city received approximately $1,042,000 in CDBG funds, which constituted a substantial amendment to its consolidated plan.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: September 22, 2010.

Reason Waived: The City was allowed to shorten its comment period from 30 days to three days so that the City could carry out eligible activities utilizing $1,042,000 in CDBG funds before such funds expired at the end of Fiscal Year 2010.

Contact: Mark Walling, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7282, Washington, DC 20410, telephone 402–5441.

• *Regulations:* 24 CFR 92.214(a)(6).

Project/Activity: Prince George's County of Maryland (County) requested a waiver of 24 CFR 92.214(a)(6) of the HOME regulations to allow it to provide

additional HOME funds to a project that had previously been assisted with HOME funds.

Nature of Requirements: HUD's regulation at 24 CFR 92.214(a)(6) prohibits participating jurisdictions from investing additional HOME funds in a project previously assisted with HOME funds, except during the first year after project completion.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: August 30, 2010.

Reasons Waived: The County requested a waiver of 24 CFR 92.214(a)(6) of the HOME regulations to permit the County to provide additional HOME funds to assist the rehabilitation of a 100-unit affordable housing project for low-income seniors. The County was granted the waiver because use of the additional HOME funds would permit Prince George's County to preserve and extend the affordability of a low-income senior project.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7164, Washington, DC 20410–7000, telephone (202) 708–4606.

• *Regulations:* 24 CFR 92.300(a)(1).

Project/Activity: The State of Minnesota requested a waiver of 24 CFR 92.300(a)(1) of the HOME regulations to permit limited liability company (LLC) ownership of two HOME projects by the Southwest Minnesota Housing Partnership (SWMHP) in Buff County, MN.

Nature of Requirement: HUD's regulation at 24 CFR 92.300(a)(1) requires that HOME funds allocated for investment by a community housing development organization (CHDO) be provided to the CHDO, its subsidiary, or a partnership of which it or its subsidiary is the managing general partner.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: August 16, 2010.

Reasons Waived: For the first project considered by the waiver, SWMHP is the sole member and has 100 percent ownership of the LLC that owns the project. HUD determined that no waiver was required here because the LLC is a subsidiary of the CHDO and 24 CFR 92.300(a)(1) permits the State to provide funds directly to a CHDO subsidiary. For the second project considered by the waiver, HUD determined that SWMHP's 80 percent membership interest and voting share give it effective management and control of the LLC as required by 24 CFR 92.300(a)(1).

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone (202) 708–3002.

• *Regulation:* 24 CFR 570.308(a)(1).

Project/Activity: The city of Hammonton, NJ (City) elected to accept its status as an entitlement community for FY 2011 after relinquishing such status for FY 2010. The City desires to enter into a joint agreement with Atlantic County, NJ, to plan and implement a joint housing and community development program.

Nature of Requirement: A city that has been classified as a metropolitan city may accept its status, but elect not to receive a CDBG grant. A city or town such as Hammonton that accepts its status may enter into a joint agreement with an urban county, but HUD's regulation at 24 CFR 570.308(a)(1) provides that a county may only do so when the county is seeking a three-year requalification as an urban county. Atlantic County is currently entering into its second year of qualification for FYs 2010–2012 and will requalify as an urban county in 2012 for FYs 2013–2015.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning & Development.

Date Granted: July 16, 2010.

Reason Waived: The City does not have the available resources to prepare the CDBG application and reporting documentation, such as the citizen participation plan, Consolidated Plan/Action Plan, fair housing analysis, and Consolidated Annual Performance and Evaluation Report. In addition, the City staff does not have the skills to conduct transaction in HUD's Integrated Disbursement and Information System, which is necessary for successful CDBG program administration. Because Atlantic County was willing to provide the City with administrative services and supported the City's request for a waiver, the waiver was granted.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 402–2184.

• *Regulation:* 24 CFR 570.308(a)(1).

Project/Activity: The city of Torrance, CA, (City) has qualified as a metropolitan city since 1974 but elected not to receive its CDBG grant until FY 2011. The City desires to enter into a joint agreement with Los Angeles County, CA to plan and implement a joint community development program.

Nature of Requirement: A city that has been designated as a metropolitan city may accept its status but elect not to receive its CDBG grant. A city that now elects to accept its CDBG grant such as Torrance may enter into a joint agreement with an urban county, but HUD's regulation at 24 CFR 570.308(a)(1) provides that a city may only do so when the county is seeking a three-year requalification as an urban county. Los Angeles County is currently entering into its third year of qualification for FYs 2010–2011 and will requalify as an urban county in 2011 for FYs 2012–2014.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning & Development.

Date Granted: August 16, 2010.

Reason Waived: Torrance has never carried out any activities under the CDBG program and does not have the available resources to prepare the CDBG application and reporting documentation, such as the citizen participation plan, Consolidated Plan/Action Plan, fair housing analysis, and Consolidated Annual Performance and Evaluation Report. In addition, Torrance staff does not have the skills to conduct transactions in HUD's Integrated Disbursement and Information System, which is necessary for successful CDBG program administration. Because Los Angeles County was willing to provide Torrance with administrative services and supported the City's request for a waiver, the waiver was granted.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 402–2184.

• *Regulation:* 24 CFR 574.330(a)(1) and (b)(1).

Project/Activity: The Downtown Emergency Service Center (DESC) located in the city of Seattle, WA (City) is funded by a HOPWA competitive grant recipient that provides permanent and supportive services to persons living with HIV/AIDS. Following a HUD field office compliance monitoring visit in April 2010, it was determined that DESC provided short-term supported housing to 60 families, beyond the limit of 50 families as prescribed in the HOPWA regulation. In addition, the center was also supporting these families for longer than the allotted six-month period.

Nature of Requirement: The HOPWA regulation at 24 CFR 574.330(a)(1) and (b)(1) prohibits short-term supported housing facilities from providing residence to any individual for more than 60 days during any six month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. The regulation also prohibits any short-term supported facility from providing shelter or housing at any single time to more than 50 families or individuals.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2010.

Reason Waived: The waiver was granted because this HOPWA assisted housing project fills a need for temporary housing and neither of the two alternative local facilities, which were not HUD-funded facilities, was acceptable. One facility only accepted residents on an "ad hoc, late-night attendance basis," while the other required religious participation on behalf of the program beneficiaries. In addition, it was recognized that the regulatory 50-individual/50-bed limitation coupled with the lack of available alternative facilities capable of addressing client service needs, presented significant challenges to the City in addressing homelessness.

Contact: Mark Johnston, Deputy Assistance Secretary for Special Needs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7276, Washington, DC 20410–7000, telephone (202) 708–1590.

• *Regulation:* Section IV.A.1 of the Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing Program (HPRP) grantee, Metropolitan Government of Nashville and Davidson County (MGNDC), Nashville, Tennessee, requested a waiver of Section IV.A.1 of the HPRP Notice in order to place HPRP participants in housing owned by the subgrantee, Renewal House.

Nature of Requirement: Section IV.A.1. of the HPRP Notice provides that HPRP financial assistance may not be used in connection with housing owned by the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: September 9, 2010.

Reason Waived: The grantee sufficiently demonstrated that: (1) The use of the housing owned by Renewal House was necessary to provide an adequate supply of appropriate housing options for HPRP participants; (2) Renewal House disclosed the conflict of interest; (3) MGNDC's attorney reviewed the conflict of interest and determined that the use of the housing owned by the subgrantee would not violate state or local law; (4) HPRP participants would not be required or steered to live in Renewal House's housing in order to receive financial or other assistance under HPRP; (5) the use of the housing owned by Renewal House would not result in any personal or financial gain for any employee of the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee; and (6) the housing for which the grantee requested a waiver is not subsidized under another federal, state, or local housing program.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone number (202) 708–4300.

• *Regulation:* Section IV.A.1 of the HPRP Notice.

Project/Activity: HPRP grantee, the Commonwealth of Kentucky requested a waiver of Section IV.A.1 of the HPRP Notice to place HPRP participants in housing owned by the following subgrantees: Kentucky River Community Care, Inc., Kentucky Communities Economic Opportunities Council on Community Action Partnership, and People's Self-Help Housing, Inc.

Nature of Requirement: Section IV.A.1. of the HPRP Notice provides that HPRP financial assistance may not be used in connection with housing owned by the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: August 11, 2010.

Reason Waived: The grantee sufficiently demonstrated that: (1) The use of the housing owned by the subgrantees was necessary to provide an adequate supply of appropriate housing options for HPRP participants; (2) the subgrantees disclosed the conflict of interest; (3) the subgrantee attorney's reviewed the conflict of interest and determined that the use of the housing owned by the subgrantees would not violate state or local law; (4) HPRP participants would not be required or steered to live in housing of the subgrantees in order to receive financial or other assistance under HPRP; and (5) the use of the housing owned by the subgrantees would not result in any personal or financial gain for any employee of the grantee, subgrantees, or the parent, subsidiary, or affiliated organization of the subgrantees.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone number (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.72.

Project/Activity: Long Island College Hospital (LICH)—Brooklyn, NY.

Nature of Requirement: HUD's regulation at 24 CFR 200.72 provides that to be eligible for FHA programs, a project must be compliant with local zoning and building codes before a closing occurs.

Granted By: David H. Stevens, Assistant Secretary for Housing, Federal Housing Commissioner.

Date Granted: September 23, 2010.

Reason Waived: HUD's regulation at 24 CFR 200.72 requires LICH to obtain a "Permanent Certificate of Occupancy" from the New York Building Department before proceeding to "Final Endorsement." In New York City, it is not unusual for hospitals to wait many years for a final occupancy certificate. This waiver would be only for HUD insured mortgage loan requirements so LICH may proceed to final closing. The Hospital must still comply with local ordinances and laws.

Contact: Roger Lukoff, Associate Deputy Assistant Secretary for Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th St., SW., Room 9224, Washington, DC 20410–8000, telephone (202) 402–4762.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Catalpa Apartments, Springfield, MO, Project Number: 084–HD064/MO16–Q081–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the

amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 1, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Tomlinson Apartments, Vista, CA, Project Number: 129–HD030/CA33–Q041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Kappa House II Apartments, Cleveland, OH, Project Number: 042–EE206/OH12–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Kateri Tekakwitha Senior Housing, Auburn, MA, Project Number: 023–EE219/MA06–S071–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ogden Gardens, Philadelphia, PA, Project Number: 034 HD103/PA26–Q081–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 29, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ACL Clarksburg, Clarksburg, MA, Project Number: 023–HD231/MA06–Q081–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 10, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cane Manor, New Iberia, LA, Project Number: 064–HD124/LA48–Q081–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: AHEPA 63, Tallmadge, OH, Project Number: 042–EE218/OH12–S071–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 17, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hempfield Apartments South, Greenville, PA, Project Number: 033–EE137/PA28–S081–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 18, 2010.

Reason Waived: The project is economically designed and comparable

in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Chadwick Place II, Marion, OH, Project Number: 043–EE123/OH16–S081–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 8, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: CPNJ West Orange Residence II, West Orange, NJ,

Project Number: 031–HD158/NJ39–Q081–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 9, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Five Talents Apartments, Lexington, MS, Project Number: 065–HD044/MS26–Q081–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 17, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lutheran Commons At Pleasant Gap, Pleasant Gap, PA, Project Number: 034–EE157/PA26–S081–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 21, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Catharine's Senior Apartments, Mt. Penn, PA, Project Number: 034–EE160/PA26–S081–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 22, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Melinda's Melody, Christiansburg, VA, Project Number: 051–EE133/VA36–S081–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 22, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Spruce Place, Beaverton, OR, Project Number: 126–HD046/OR16–Q081–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 28, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: CAAP–Place of Hope, Memphis, TN, Project Number: 081–HD026/TN40–Q081–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Keystone Place, St. Joseph, MO, Project Number: 084–HD063/MO16–Q081–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Whispering Hope, Lake Charles, LA, Project Number: 064–EE231/LA48–S081–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Western North Carolina Community Apartments #1, Charlotte, NC, Project Number: 053–HD240/NC19–Q071–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the project was delayed while a new site was obtained and new construction requirements imposed by the City of Charlotte/Mechlenburg County were addressed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: St. Theresa's Elderly Housing (aka: Rose Hill Manor), Billerica, MA, Project Number: 023–EE216/MA06–S071–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 10, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and additional time was needed for the project to be restructured since it was no longer feasible to use low income housing tax credits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Hale Oli Group Home, Ewa Beach, HI, Project Number: 140–HD032/HI10–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 8, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and additional time was needed for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Sierra Manor II, Reno, NV, Project Number: 125–EE129/NV25–S061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to submit additional documentation on the general contractor, for the firm commitment application to be issued and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AHEPA Apartments #63, Tallmadge, OH, Project Number: 042–EE218/OH12–S071–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to resolve

opposition issues from neighbors abutting the site, negotiate water drain easement, resubmit the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AHEPA Apartments #63, Tallmadge, OH, Project Number: 042–EE218/OH12–S071–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 6, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to prepare and submit the initial closing package and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cedar Street Apartments, Redwood City, CA, Project Number: 121–HD090/CA39–Q071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 15, 2010.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Willow Glen Apartments (aka Newton Falls), Newton Falls, OH, Project Number: 042–EE223/OH12–S071–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 17, 2010.

Reason Waived: Additional time was needed for HUD to review the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Park Side Apartments, Terra Alta, WV, Project Number: 045–EE031/WV15–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 22, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to revise the closing documents and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b), 891.830(b) and 891.830(c)(4).

Project/Activity: Oakwood Shores Senior Apartments, Chicago, IL, Project Number: 121–EE205/CA39–S081–001.

Nature of Requirement: Section 891.130(b) an identity of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team member or between development team members is prohibited until two years after final closing. Section 891.830(b) allows the capital advance funds be drawn down only in an approved ratio to other funds, in accordance with draw down schedule approved by HUD. Section 891.830(c)(4) permits the capital advance drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project.

Granted by: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2010.

Reason Waived: The waiver was granted to allow the investor to have more than one role in the mixed finance transaction and additional time was needed for the sponsor/owner to obtain a new investor, to permit capital advance funds be expended before the tax credit equity. Additionally, granting of the waiver would allow the capital advance to be expended before the tax credit equity and to permit capital advance funds to pay off that portion of the tax exempt bonds that strictly relate to capital advance eligible costs after completion of construction at initial/final closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority (HA) of the City of New Haven (CT004), New Haven, CT.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 6, 2010.

Reason Waived: The HA submitted that it had encountered several internal control problems that contributed to the delay in submitting the FYE 2008 audit, thereby delaying submission of the FYE 2009 audited financial information. Primarily, conversion to a new accounting system resulted in an insufficient audit trail. As a result, both the HA and the auditors could not be assured the HA account balances were being properly recorded. The waiver was partially approved. Specifically, the HA requested a six month waiver of the

audited financial submission reporting requirements, however, HUD granted three month waiver. In granting the waiver, HUD required the HA to submit its FYE September 30, 2009, audited financial information no later than September 30, 2010. The waiver provided the HA with additional time to input and complete the June 30, 2009, audited financial information.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 50 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority (HA) of Fulton County, (GA264), Atlanta, GA.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 6, 2010.

Reason Waived: The HA submitted that the FYE September 30, 2009, audit was started in April 2010; however, additional compliance testing and validation were required by the auditors as a result of problems with the agency's financial data. In addition, the HA reported that significant turnover of key management positions which included the Executive Director and the Chief financial Officer also contributed to the delay. The HA stated as a result of these events, the audit could not be completed by the due date. The waiver was approved and the HA was given an additional 30 days to permit the audit documentation to be adequately completed and to allow sufficient time for drafting the financial statements and inputting the September 30, 2009, audited financial information into the online system.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority (HA) of the City of Vineland, (NJ063), Vineland, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 6, 2010.

Reason Waived: The HA submitted that the auditor experienced unforeseen health issues that prevented the auditor from completing the audit due date for FYE September 30, 2009. The waiver was granted and the HA was given an additional 30 days to permit the audit documentation to be adequately completed and allow sufficient time for drafting financial statements and imputing the September 30, 2009, audited financial information into the online system.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Rockingham Housing Authority (HA), (NC025), Rockingham, NC.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: The HA submitted that as a result of a federal and local investigation, several of the HA's tenant, financial and personnel files were seized. In addition, the HA reported that a new administration arrived at the HA in December 2009, and discovered that the procurement of audit services for FY 2009 audit had not been completed. Subsequently, a contract was executed on April 21, 2010. The waiver was granted and the additional time would permit the audit documentation to be adequately completed and allow sufficient time for drafting the financial statements and imputing the June 30, 2009, audited financial information into the online system. The waiver required the HA to submit its FYE June 30, 2009, audited financial information no later than August 31, 2010.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: City of Phoenix Housing Department (HA), (AZ001), Phoenix, AZ.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with *Federal Register* Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: The HA was granted a waiver from HUD on May 10, 2010. However, the HA remained in the process of continuing its conversion to asset management and purchased a new business system that would be able to track information at the Asset Management project level. The system is not yet fully functional and the HA advised that it would need to utilize data from both the old and new systems, along with relevant paper documents in order to ensure that the retrieved data would be accurate and would not contain duplicate information. Since this would result in a continuing administrative hardship, the waiver was granted.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of the County of Beaver (HA), (PA014), Beaver, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In

accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 01, 2010.

Reason Waived: The HA was granted a waiver for June 30, 2009, but the HA remained in the process of continuing its conversion to asset management. The HA stated that amassing the required information in support of the current MASS submission requirement would result in an administrative hardship. The waiver was granted for FYE June 30, 2010 and the most recent management operations score of record were allowed to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Altoona Housing Authority (HA), (PA031), Altoona, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with *Federal Register* Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 01, 2010.

Reason Waived: The HA was granted a waiver for June 30, 2009, but the HA remained in the process of continuing its conversion to asset management. The HA stated that amassing the required information in support of the current MASS submission requirement would result in an administrative hardship. The waiver was granted for FYE June 30, 2010 and the most recent management operations score of record were allowed to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Allegheny County Housing Authority (HA), (PA006), Pittsburgh, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 1, 2010.

Reason Waived: The HA was granted a waiver for June 30, 2009, and the HA successfully completed its conversion to asset management. The HA completely changed its software systems and its management procedures for its 33 Asset Management Projects. Reversing these systems and manually amassing the information would impose a burdensome and time consuming administrative hardship. For this reason, the waiver was granted for FYE June 30, 2010 and the most recent management operations score of record were allowed to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment. Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Fayette County Housing Authority (HA), (PA015), Uniontown, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 10, 2010.

Reason Waived: The HA requested a waiver of the management operations certification requirements for the fiscal year ending (FYE) June 30, 2010. The HA was granted a waiver for the FYE June 30, 2009, and remains in the process of continuing its conversion to asset management. The HA began implementing the required changes in its software and record keeping systems to meet the new reporting requirements. Because it was determined that manually gathering data in support of the current MASS submission requirements would be difficult, time consuming, and result in an administrative hardship, the waiver was granted for FYE June 30, 2010 and the most recent management operations score of record were allowed to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Winston-Salem Housing Authority (HA), (NC012), Winston-Salem, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). In accordance with **Federal Register** Notice (FR–5428–N–01), dated July 23, 2010, Public housing agencies that requested and was granted a waiver for their management operations certification for FYEs June 30, 2009, or September 30, 2009, may request another waiver for the FYE June 30, 2010, or September 30, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 10, 2010.

Reason Waived: The HA requested a waiver of the management operations certification requirements for the fiscal year ending (FYE) September 30, 2010. The HA was granted a waiver for the FYE September 30, 2009, and completed its conversion to asset management. The HA reported that it no longer tracks management operations at all of its public housing sites, including its HOPE

VI sites that are privately managed and converted its existing software program to track operations individually at each of its asset management project sites. Because the resources required to accurately produce the required reports to support a consolidated management operations certification are no longer available and would result in a continuing administrative hardship, the waiver was granted. The waiver was granted for FYE September 30, 2010, and the most recent management operations score of record were allowed to be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Indianapolis Housing Authority (IHA), Indianapolis, IN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 2, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the IHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Inglewood Housing Authority (IHA), Inglewood, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 2, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the IHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of Skagit County (HASC), Skagit County, WA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 8, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the HASC to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: West Springfield Housing Authority (WSHA), West Springfield, MA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 8, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the WSHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Worthington Housing and Redevelopment Authority (WHRA), Worthington, MN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 8, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the WHRA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Crookston Housing and Economic Development Authority (CHEDA), Crookston, MN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 19, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CHEDA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: East Chicago Housing Authority (ECHA), East Chicago, IN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 20, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the ECHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Carbon County Housing Authority (CCHA), Carbon County, PA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 29, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CCHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: LeSueur County Housing and Redevelopment Authority (LCHRA), LeSueur County, MN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 29, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the LCHRA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Randolph County Housing Authority (RCHA), Randolph County, IL.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 6, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the RCHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Richmond Housing Authority (RHA), Richmond, IN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the RHA to manage its Housing Choice Voucher

program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Terrebonne Parish Consolidated Government (TPCG), Terrebonne Parish, LA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 18, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the TPCG to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: People Incorporated of Southwest Virginia (PISV), Arlington, VA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 21, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable the PISV to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 2, 2010.

Reason Waived: The participant, who is disabled, required an exception payment standard to remain in her assisted unit. Her health care provider confirmed the need for this participant to remain in her unit. To provide this reasonable accommodation so the client could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Cumberland County Housing Authority, Cumberland (CCHA), Cumberland County, PA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 20, 2010.

Reason Waived: The participant, who has a disabled daughter, required an exception payment standard to remain in her assisted unit as her daughter's health care provider recommended that she not relocate. To provide this reasonable accommodation so the client could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the CCHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Grand Forks Housing Authority (GFHA), Grand Forks, ND.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: The participant, who is disabled, required a wheelchair-accessible unit. To provide this reasonable accommodation so the client could be assisted in this unit and pay no more than 40 percent of her adjusted income toward the family share, the GFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Lincoln Housing Authority (LHA), Lincoln, RI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: The applicant, who is disabled, needed a unit free of chemical fumes. To provide this reasonable accommodation so the client could be assisted in this unit and pay no more than 40 percent of her adjusted income toward the family share, the LHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Northeast Oregon Housing Authority (NOHA), La Grande, OR.

Nature of Requirement: HUD's regulation 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 17, 2010.

Reason Waived: The participant, who is disabled, required a wheelchair-accessible unit with yard space for a service dog to provide reasonable accommodation. To provide this reasonable accommodation so the client could be assisted in this current unit and pay no more than 40 percent of her adjusted income toward the family share, the NOHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.55(b).

Project/Activity: Minneapolis Public Housing Authority (MPHA), Minneapolis, MN.

Nature of Requirement: HUD's regulation at 24 CFR 983.55(b) states that the public housing agency may not enter an agreement to enter into a housing assistance payments contract (AHAP) until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the project-based voucher assistance is in accordance with HUD subsidy layering requirements.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: September 2, 2010.

Reason Waived: This waiver was granted because MPHA misunderstood the requirements and did not attempt to avoid compliance. The project also complied with HUD's strategic goal of increasing the number of affordable housing for families.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.58(d)(1)(i), 983.152(b), and 983.153(a) and (b).

Project/Activity: Minneapolis Public Housing Authority (MPHA), Minneapolis, MN.

Nature of Requirement: HUD's regulation at 24 CFR 983.58(d)(1)(i) prohibits a public housing agency (PHA) from entering into an Agreement to Enter into a HAP Contract (AHAP) or starting construction until such time as the responsible entity has completed the environmental review and HUD has approved the environmental certification and request for release of funds. HUD's regulation at 24 CFR 983.152(b) requires that a PHA enter into an AHAP in which the owner agrees to develop the contract units to comply with housing quality standards (HQS) and the PHA agrees that, upon timely completion of such development in accordance with the terms of the AHAP, the PHA will enter into a HAP contract with the owner for the units. HUD's regulation at 24 CFR 983.153(a) and (b) states that: (a) The PHA may not enter the AHAP with the owner until the subsidy layering review is completed; and (b) the PHA may not enter the AHAP with the owner until the environmental review is completed and the PHA has received the environmental approval.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2010.

Reason Waived: Based on the documentation that was reviewed by the field office showing that environmental review requirements were met and that the developer complied with the requirements under the AHAP, as well as the fact that without a commitment of PBV assistance the viability of six projects as affordable housing to replace the significant loss of affordable housing units as a result of Hurricane Katrina would be in jeopardy.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.152(a) and 983.153(c).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 983.152(a) requires that a public housing agency (PHA) must enter into an Agreement to Enter into a Housing Assistance Payments (AHAP) Contract in a form required by HUD. HUD's regulation at 24 CFR 983.153(c) requires prompt execution of the AHAP after PHA notice of proposal selection to the selected owner.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: August 17, 2010.

Reason Waived: The waivers were granted because the owner certified that the developer complied with the requirements under the AHAP, and because the unique circumstances surrounding the need for PBV assistance for the project as an integral piece of a much larger funding commitment to serve low-income elderly, homeless and special needs populations.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.240(b).

Project/Activity: Public housing operating subsidy, Alaska Housing Finance Corporation.

Nature of Requirement: HUD's regulation at 24 CFR 990.240(b) prohibits appeals of the operating subsidy formula for individual public housing projects in housing authorities with less than 5,000 public housing units.

Granted By: The Deputy Secretary.

Date Granted: September 13, 2010.

Reason Waived: The waiver was granted so the PHA could appeal its operating fund formula for calendar year 2010. The appeal was for unusually high vacancies in two public housing projects in remote areas of the state.

Contact: Kevin J. East, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington DC 20410–5000; telephone (202) 475–8575.

[FR Doc. 2010–32444 Filed 12–23–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000.PC0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0042 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR part 4700, which pertain to the protection, management, and control of wild free-roaming horses and burros.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before January 26, 2011.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0042), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

Fax: Jean Sonneman at fax number 202–912–7102.

Electronic mail: jean_sonneman@blm.gov.

FOR FURTHER INFORMATION CONTACT: You may contact Bea Wade at 775–861–6625. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Ms. Wade. You may also contact Ms. Wade to obtain a copy, at no cost, of the regulations and the form pertaining to this collection of information.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. 44 U.S.C. 3506 and 3507.

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR part 4700.

The following information is provided for the information collection:

Title: Protection, Management, and Control of Wild Free-Roaming Horses and Burros (43 CFR part 4700).

Form: Form 4710–10, Application for Adoption of Wild Horse(s) or Burro(s).

OMB Control Number: 1004–0042.

Type of Review: Extension without change of a currently approved information collection.

Abstract: This notice pertains to the collection of information that is necessary to administer the BLM's adoption program for wild horses and burros. The BLM uses the information to determine if applicants are qualified to enter into a Private Maintenance and Care Agreement (*i.e.,* adopt wild horses and/or burros), to determine whether or not to grant requests for replacement animals or refunds, and to make other arrangements for animals' care when an adopter wants to terminate a Private Maintenance and Care Agreement.

Frequency: On occasion.

Estimated Annual Number and Description of Respondents: 14,452 individuals and households (including 14,000 applicants for adoption of wild horses or burros, 12 seeking authorization for private maintenance of more than 4 wild horses or burros, 320 requesting termination of Private Maintenance and Care Agreement, and 120 requesting replacement animals).

Estimated Completion Time per Response: Varies from 10 to 30 minutes depending on activity.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 14,452 responses and 7,222 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: $7,200.

60-Day Notice: As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on June 28, 2010 (75 FR 36665), soliciting comments from the public and other interested parties. The comment period closed on August 27, 2010. The BLM received one comment. The comment was a general invective about the Federal government, the Department of the Interior, and the BLM. It did not address, and was not germane to, this information collection. Therefore, we have not changed the information collection in response to the comment.

The BLM again requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0042 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–32427 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000.ES0000 241A; N–88117; 11–08807; MO# 4500017954; TAS: 14X5232]

Notice of Realty Action: Recreation and Public Purposes Act Classification for Lease and/or Subsequent Conveyance of Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and/or subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 40 acres of public land in the City of Las Vegas, Clark County, Nevada. The Clark County School District proposes to use the land for a bus transportation facility.

DATES: Interested parties may submit written comments regarding the proposed classification of the land, or lease and/or subsequent conveyance of the land, until February 10, 2011.

ADDRESSES: Send written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or e-mail to *Dorothy_Dickey@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothy Jean Dickey, (702) 515–5119, or *Dorothy_Dickey@blm.gov.*

SUPPLEMENTARY INFORMATION: *The parcel of land is legally described as:*

Mount Diablo Meridian

T. 19 S., R. 59 E.,
Sec. 36, SE¼;NW¼.

The area described contains 40 acres, more or less, in Clark County.

In accordance with the R&PP Act, the Clark County School District has filed an application to develop the above described land for a northwest bus transportation facility. The bus transportation facility will include an administration building and a maintenance yard for parking, cleaning, and fueling school buses. The facilities are necessary to meet the public school transportation needs of the community in the northwest Las Vegas Valley. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–88117, which is located in the BLM Las Vegas Field Office at the above address.

The Clark County School District is a common applicant under the public purposes provision of the R&PP Act. The Clark County School District is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act.

The lease and/or subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The land is not required for any Federal purpose. The lease and/or subsequent conveyance is/are consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The Clark County School District has not applied for more than the 640-acre limitation for public purpose uses that are not for recreation purposes in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). The lease and/or subsequent conveyance, if and when issued, will be subject to valid entry rights and the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Reservation in Patents Right-of-Way for Ditches or Canals Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. A right-of-way for roads, drainage, and municipal utilities granted to Clark County, its successors or assigns, by right-of-way N–61323, pursuant to the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1761;

5. A right-of-way for roads, drainage, and municipal utilities granted to Clark County, its successors or assigns, by right-of-way N–60903, pursuant to the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1761; and

6. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a northwest public school bus transportation facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease and/or convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

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. Only written comments submitted to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments will be reviewed by the BLM Nevada State Director. In the absence of any adverse comments, the decision will become effective on February 25, 2011. The lands will not be available for lease and/or subsequent conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5

Vanessa L. Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2010–32429 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L51010000.ER0000 LVRWF0900380 241A; 11–08807; MO#4500015810; TAS: 14X5017]

Notice of Availability of Record of Decision for the Tonopah Solar Energy, LLC, Crescent Dunes Solar Energy Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision

(ROD) for the Tonopah Solar Energy Crescent Dunes Solar Energy Project Environmental Impact Statement (EIS). The Secretary of the Interior approved the ROD on December 20, 2010, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD are available upon request from the BLM Tonopah Field Office, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada 89049; and at the Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada 89820; or at the following Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.* Copies of the ROD are also available for public inspection at the following locations in Nevada:

- BLM Nevada State Office, 1340 Financial Boulevard, Reno;
- BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain; and
- BLM Tonopah Field Office, 1553 South Main, Tonopah.

FOR FURTHER INFORMATION CONTACT: Timothy Coward, Renewable Energy Project Manager, *telephone:* (775) 482–7830; *mailing address:* BLM Tonopah Field Office, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada 89049; or *e-mail: Timothy_Coward@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Tonopah Solar Energy, LLC, is authorized to construct the Crescent Dunes Solar Energy Project and other related project facilities, on approximately 2,250.27 acres of public lands with a nominal capacity of 110 megawatts. The Crescent Dunes Solar Energy Project is a solar facility using concentrated solar thermal power technology.

The project facility footprint will disturb approximately 1,620 acres of the project area and will include a solar field (consisting of up to 17,500 dual axis tracking heliostats mounted on concrete or steel foundations), a 653-foot central receiver tower, salt tanks, steam generation building and equipment, steam turbine and generator, water treatment facilities and evaporation ponds, evaporative cooling tower and air cooled condenser (combined to form a hybrid-cooling system), electrical equipment and buildings, heliostat assembly building, administration and operation building, an access road from Pole Line Road to the site, drainage and stormwater control facilities, and temporary construction facilities. Transmission infrastructure consists of a 5.6 mile-long 230 kV transmission line from the project area to the nearby Anaconda Moly Substation.

The Notice of Availability (NOA) for the Draft EIS analyzing impacts of the proposed project was published in the **Federal Register** on September 3, 2010 (75 FR 54177) for public review and comment. A total of 23 comment letters were received on the Draft EIS. The comments were incorporated, where appropriate, to clarify the analysis presented in the Final EIS. The NOA for the Final EIS was published in the **Federal Register** by the Environmental Protection Agency on November 19, 2010 (75 FR 70917) and the BLM on November 26, 2010 (75 FR 72836).

Three action alternatives were analyzed in addition to the No Action Alternative: the Proposed Action Alternative, Alternative 1, and Alternative 2. Alternative 2 is the BLM's preferred alternative.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal [43 CFR 4.410(a)(3)].

Authority: 40 CFR 1506.6 and 1506.10

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2010–32432 Filed 12–23–10; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–798–803 (Second Review)]

Stainless Steel Sheet And Strip From Germany, Italy, Japan, Korea, Mexico, And Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on stainless steel sheet and strip from Korea and antidumping duty orders on stainless steel sheet and strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on stainless steel sheet and strip from Korea and/or the antidumping duty orders on stainless steel sheet and strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these reviews are extraordinarily complicated, and therefore will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* December 20, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background:—On September 7, 2010, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (75 FR 59744, September 28, 2010). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list:—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list: —Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report: —The prehearing staff report in the reviews will be placed in the nonpublic record on May 2, 2011, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing:—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 25, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 18, 2011. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 20, 2011, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions:—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 11, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 6, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 6, 2011. On June 29, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 1, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: December 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32409 Filed 12–23–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–376 and 379 and 731–TA–788, 790–793 (Second Review)]

Stainless Steel Plate from Belgium, Italy, Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty orders on stainless steel plate from Belgium and South Africa and the antidumping duty orders on stainless steel plate from Belgium, Italy, Korea, South Africa, and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders on stainless steel plate from Belgium and South Africa and/or the antidumping duty orders on stainless steel plate from Belgium, Italy, Korea, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these reviews are extraordinarily complicated, and will therefore exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* December 20, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2010, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (75 FR 59744, September 28, 2010). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 9, 2011, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 26, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 18, 2011. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 20, 2011, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 17, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 13, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 13, 2011. On July 11, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 13, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

AUTHORITY: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: December 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32411 Filed 12–23–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–617]

In the Matter of Certain Digital Television Products and Certain Products Containing Same and Methods Of Using Same; Notice of Commission Determination To Modify a Limited Exclusion Order and Cease-and-Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify a limited exclusion order and cease-and-desist orders issued in the above-captioned investigation following the decision of the United States Court of Appeals for the Federal Circuit in *Vizio, Inc.* v. *U.S. International Trade Commission,* 605 F.3d 1330 (Fed. Cir. 2010).

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 non-confidential documents filed in connection with this

investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 15, 2007, based on a complaint filed by Funai Electric Co., Ltd. of Japan and Funai Corporation of Rutherford, New Jersey (collectively "Funai") against several respondents including Vizio and AmTran. 72 FR 64240 (2007). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 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 digital television products and certain products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 6,115,074 ("the '074 patent") and 5,329,369.

On April 10, 2009, the Commission terminated this investigation with a finding of violation of Section 337 by reason of infringement of claims 1, 5, and 23 of the '074 patent. 74 FR 17511 (2009). The Commission issued a limited exclusion order prohibiting importation into the United States of certain digital televisions and certain products containing the same within the scope of the investigation that are covered by one or more of claims 1, 5, and 23 of the '074 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of various respondents in the above referenced investigation, including Vizio, Inc. ("Vizio"); AmTran Technology Co., Ltd. ("AmTran"); Syntax-Brillian Corporation ("SBC"); Taiwan Kolin Co., Ltd.; Proview International Holdings, Ltd.; Proview Technology (Shenzhen) Co., Ltd.; Proview Technology, Ltd.; TPV Technology, Ltd. ("TPV Technology"); TPV International (USA), Inc. ("TPV USA"); Top Victory Electronics (Taiwan) Co., Ltd. ("Top Victory Electronics"); and Envision Peripherals, Inc. ("Envision"). Cease-and-desist orders were issued against Vizio, TPV USA, Envision, and SBC.

Respondents Vizio, AmTran, TPV Technology, TPV USA, Top Victory Electronics, and Envision appealed to the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). On May 26, 2010, the Federal Circuit issued a decision reversing certain Commission findings of infringement by so-called "work-around" products and ordering the Commission to take action consistent with its opinion. *See Vizio, Inc.* v. *Int'l Trade Comm'n,* 605 F.3d 1330 (Fed. Cir. 2010).

Shortly before the Federal Circuit issued its opinion, respondents Vizio and AmTran settled with complainant Funai and moved to rescind the limited exclusion order and cease-and-desist orders with respect to these respondents. On August 9, 2010, the Commission rescinded the limited exclusion order and the cease-and-desist orders with respect to Vizio and AmTran.[1]

The Federal Circuit issued its mandate on October 28, 2010 *sub nom. TPV Technology* v. *U.S. International Trade Commission*. In accordance with the Federal Circuit's order, the Commission has determined to modify the limited exclusion order and the cease-and-desist orders directed to the activities of TPV USA and Envision.

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 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(a)(1)).

By order of the Commission.
Issued: December 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–32412 Filed 12–23–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The Commission has not modified the cease-and-desist order directed to SBC because the findings of infringement by SBC were not appealed and therefore remain intact.

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on December 20, 2010, a proposed Settlement Agreement ("Agreement") in *In re Erving Industries, Inc.,* Case No. 09–30623 (Bankr. D. Mass), was lodged with the United States Bankruptcy Court for the District of Massachusetts. The Agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers (the "Corps"), and Erving Industries, Inc. ("Debtor"). The Agreement relates to liabilities of the Debtor under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* ("CERCLA").

The Agreement provides that the Past Response Cost Claim shall be allowed as an unsecured claim in the amount of $25,000, and paid as an unsecured claim in accordance with the terms of the Debtor's plan of reorganization.

This Agreement does not preclude: (a) Claims against the Debtor by the United States under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs incurred after January 15, 2010 with respect to response actions taken at Debtor-Owned Property, the Mill, and/or the Birch Hill Dam Area including such response actions taken to address hazardous substances that have migrated or that may migrate from such Debtor-Owned Property, and/or the Mill, including but not limited to the Birch Hill Dam Area; and (b) Actions against the Debtor by the United States under CERCLA or RCRA seeking to compel the performance of a removal action, remedial action, corrective action, closure or any other cleanup action at Debtor-Owned Property, and/or the Mill, including actions to address hazardous substances that have migrated, or that may migrate, from such Debtor-Owned Property, and/or the Mill, including but not limited to the Birch Hill Dam Area. The Debtor further agrees that such claims are not discharged or impacted in any way by the bankruptcy proceeding or confirmation of plan of reorganization. The United States has available to it all avenues to pursue such enforcement actions, and both parties reserve all defenses and counterclaims, except those provided under the Bankruptcy Code.

Under the Agreement, the Debtor must comply with all obligations under the 2007 Consent Decree entered in *United States* v. *Baldwinville Products, Inc., et.al.* (C.A. No. 4:07–CV–40146) (D. Mass.). These obligations are not effected in any way by this bankruptcy proceeding or confirmation of a plan of reorganization.

Under the Agreement, the United States covenants not to bring civil or administrative actions against the Debtor pursuant to Section 107 of CERCLA relating to Past Response

Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtor of its obligations under the Agreement. The covenant not to sue applies only to the Debtor and does not prevent the United States from suing other persons. Additionally, the covenant not to sue is limited to Section 107 actions under CERCLA related to Past Response Costs; the United States reserves its rights to all other claims against the Debtor. The Debtor also covenants not to sue or to assert any claims against the United States with respect to Past Response Costs.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re Erving Industries, Inc.,* Case No. 09–30623 (Bankr. D. Mass) and D.J. Ref. No. 90–11–3–1728/2. A copy of the comments should be sent to Catherine Adams Fiske, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458 or e-mailed to her at *addie.fiske@usdoj.gov.*

The Agreement may be examined at the Office of the United States Attorney, District of Massachusetts, 595 Main St # 206, Worcester, MA 01608–2025. During the public comment period, the Agreement may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Agreement from the Consent Decree Library, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or email, forward a check to the Consent Decree library at the address stated above).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–32378 Filed 12–23–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0028]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 204, page 65381 on October 22, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 26, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Inventories, Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF REC 5400/1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* The records show the explosive material inventories of those persons engaged in various activities within the explosive industry and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation. Licensees and permittees shall keep records on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by licensees or permittees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 13,106 respondents, who will complete the records within approximately 2 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 26,212 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 20, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–32324 Filed 12–23–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before January 26, 2011.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov*. Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2010–037–C.

Petitioner: Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282.

Mine: Huff Creek No. 1 Mine, MSHA I.D. No. 15–17234, located in Harlan County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard to permit at least one entry of each return air course to be examined in its entirety so that the entire air course is traveled every 7 days, due to adverse roof, rock falls, and floor heave conditions in the return entry in the C-Mains resulting from multi-seam mining and unfavorable geological conditions. The petitioner proposes to: (1) Establish two evaluation points for weekly evaluation of the affected area, located at break 42 and break 64 in the C-Mains panel to monitor air quality and quantity entering and exiting the affected area; (2) have a certified person examine each of the evaluation points at least every 7 days, including: (i) Examine for hazards on the approaches to and at the evaluation points; (ii) evaluate and measure the quality and quantity of air flowing past the evaluation points; (iii) measure the air quality for methane, oxygen, and carbon monoxide concentrations using an approved hand-held device; (iv) measure air quantity using an appropriately calibrated anemometer. Methane gas or other harmful, noxious, or poisonous gases will not be permitted to accumulate in excess of legal limits for a return air course; (iv) immediately examine and evaluate the evaluation points where there is an increase of 0.5 percent methane above the previous reading or a 10 percent unplanned change in the airflow quantity from the previous reading to determine the cause; (v) take appropriate corrective action and determine a new initial airflow to serve as the basis for subsequent evaluations; (vi) provide a date board at each evaluation point where the certified examiner will record the date, time, his or her initials, and the measured quantity and quality of the air entering the affected area; and (vii) record the results of each weekly examination in a book maintained on the surface. (3) submit an annual ventilation map that will show the permanent ventilation controls and evaluation points in accordance with 30 CFR 75.372; and (4) maintain in safe condition at all times, all evaluation points and approaches to the evaluation points, and adequately support the roof by suitable means to prevent deterioration in the vicinity of the evaluation points. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the appropriate portion of the existing standard.

Docket Number: M–2010–038–C.

Petitioner: Enlow Fork Mining Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

Mine: Enlow Fork Mine, MSHA I.D. No. 46–07416, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.35(a)(5)(i) and (ii) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased to 900 feet for supplying power to loading machines used in the Enlow Fork Mine. The petitioner states that:

(1) Longwall development panels are being developed at the mine as part of a continuing mining cycle; (2) the longwall development panels consist of a three-entry system with 275-foot deep cuts to improve roof and abutment pressure control during longwall mining; (3) ventilation is improved by limiting the number of stoppings, which have a built-in ventilation pressure loss factor; (4) this petition will only apply

to trailing cables supplying three-phase 995-volt power to loading machines; (5) the maximum lengths of the trailing cables will be 900 feet, and the trailing cables will not be smaller than #2 American Wire Gauge (AWG); (6) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 Amperes. The trip setting of the circuit breakers will be sealed or locked, and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting #2 AWG cables and the label will be maintained legible; (7) replacement instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 800 Amperes and this setting will be sealed or locked; (8) during each production day, persons designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the settings of 800 Amperes; (9) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (10) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The outer jacket of each splice or repair will be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame-resistant; (11) in the event the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that in the future the cable is protected and maintained in safe operating condition; (12) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit protection device. The labels will warn miners not to change or alter the sealed short-circuit settings; (13) the alternative method will not be implemented until all miners who have been designated to examine the integrity of seals, verify the short-circuit settings, and proper procedures for examining trailing cables for defects and damage have received the elements of training; and (14) within 60 days after this petition is granted, proposed revisions to part 48 training plans will be submitted to the District Manager for the area in which the mines is located. The elements of training will include the following: (i) Training in mining methods and operating procedures that will protect the trailing cables against damage; (ii) training in the proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition; (iii) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (iv) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners at the Enlow Fork Mine as would be provided by the existing standard.

Docket Number: M–2010–039 –C.

Petitioner: Consol Pennsylvania Coal Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.35(a)(5)(i) and (ii) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased to 900 feet for supplying power to loading machines used in the Bailey Mine. The petitioner states that: (1) Longwall development panels are being developed at the mine as part of a continuing mining cycle; (2) the longwall development panels consist of a three-entry system with 275-foot deep cuts to improve roof and abutment pressure control during longwall mining; (3) ventilation is improved by limiting the number of stoppings, which have a built-in ventilation pressure loss factor; (4) this petition will only apply to trailing cables supplying three-phase 995-volt power to loading machines; (5) the maximum lengths of the trailing cables will be 900 feet, and the trailing cables will not be smaller than #2 American Wire Gauge (AWG); (6) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 Amperes. The trip setting of the circuit breakers will be sealed or locked, and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting #2 AWG cables and the label will be maintained legible; (7) replacement instantaneous trip units used to protect #2 AWG trailing cables will be calibrated to trip at 800 Amperes and this setting will be sealed or locked; (8) during each production day, persons designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the settings of 800 Amperes; (9) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (10) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The outer jacket of each splice or repair will be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame-resistant; (11) in the event the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that in the future the cable is protected and maintained in safe operating condition; (12) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protection device. The labels will warn miners not to change or alter the sealed short-circuit settings; (13) the alternative method will not be implemented until all miners who have been designated to examine the integrity of seals, verify the short-circuit settings, and proper procedures for examining trailing cables for defects and damage have received the elements of training; and (14) within 60 days after this petition is granted, proposed revisions to part 48 training plans will be submitted to the District Manager for the area in which the mines is located. The elements of training will include the following: (i) Training in mining methods and operating procedures that will protect the trailing cables against damage; (ii) training in the proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition; (iii) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (iv) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure

of protection to all miners at the Bailey Mine as would be provided by the existing standard.

Dated: December 20, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–32355 Filed 12–23–10; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposal Review Panel in Earth Sciences (1569).

Date and Time: January 13, 2011, 8:30 a.m.–5 p.m.; January 14, 2011, 8:30 a.m.–4 p.m.

Place: UNAVCO, Inc. Headquarters, 67350 Nautilus Drive, Boulder, CO 80301–5554.

Type of Meeting: Part Open.

Contact Person: Mr. Russell Kelz, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 292–8558.

Purpose of Meeting: To carry out review of UNAVCO, Inc. management and leadership as stipulated in cooperative agreement EAR–0735156.

Agenda

Closed:

January 13, 2011—8:30 a.m.–9:30 a.m.: organization meeting, introductions, review of charge to review panel, discussion of COI.

January 13, 2011—1 p.m.–5 p.m.: panel discussion, write up of summary of findings and recommendations.

January 14, 2011—8:30 a.m.–3:30 p.m.: complete panel summary and recommendations.

Open:

January 13, 2011—9:30 a.m.–12:00 p.m.: Presentation by UNAVCO, Inc. management and Q&A between panel and UNAVCO, Inc.

January 14, 2011—3:30 a.m.–4 p.m.: Presentation of panel draft findings to NSF/EAR/IF Program.

Reason for Closing: During the closed sessions, the panel will be reviewing information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: December 21, 2010,

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–32408 Filed 12–23–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0322]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on October 18, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 70, "Domestic Licensing of Special Nuclear Material."

3. *Current OMB approval number:* 3150–0009.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Generally, renewal applications are submitted every ten years and for major fuel cycle facilities updates of the safety demonstration section are submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions.

6. *Who will be required or asked to report:* Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

7. *An estimate of the number of annual responses:* 1,256 (655 responses + 601 recordkeepers).

8. *The estimated number of annual respondents:* 372.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 89,465 hours (81,785 reporting + 7,700 recordkeeping) or an average of 125 hours per response (81,765 reporting burden hours/655 responses) and an average of 13 hours per recordkeeper (7,700 recordkeeping burden hours/601 recordkeepers).

10. *Abstract:* 10 CFR part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material.

Submit, by February 25, 2011, comments that address the following questions:

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 26, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at 202–395–4638.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of December, 2010.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–32423 Filed 12–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; FERMI 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix E, Section IV.F.2.b, for conducting a biennial emergency preparedness exercise for Facility Operating License No. NFP–43, issued to Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated August 3, 2010, as supplemented by letters dated October 22, 2010, and November 15, 2010. Following a telephone conference with the NRC staff on September 17, 2010, the licensee determined the postponement of the exercise into calendar year 2011 to be an acceptable option to the licensee's original request for crediting the response to a tornado event on June 6, 2010, in place of the 2010 exercise.

The Need for the Proposed Action

Detroit Edison's Fermi 2 biennial evaluated exercise was scheduled to be conducted on June 8, 2010. However, on June 6, 2010 at 0217 hours, a tornado warning was issued for Monroe County due to a storm front moving through southeast Michigan. At 0238 hours, a tornado swept across the Fermi 2 property. At 0253 hours, the Shift Manager declared an Unusual Event based on reports of storm damage within the protected area, including loss of both 345kV lines for Division 2 of offsite power supply, and the loss of two out of three 120kV lines for Division 1 of offsite power supply.

Review of the actions that occurred during the June 6, 2010 actual event supplemented by the drills, exercises, and other training activities conducted since the previous biennial exercise, provides evidence that Fermi 2 has regularly exercised its emergency response strategies and personnel in coordination with the offsite authorities as required by regulations. In addition, due to a refueling outage during the fourth quarter of 2010, an alternative to schedule and conduct a biennial exercise in 2010 was ruled out by the licensee.

The proposed action would exempt Fermi 2 from the requirements of conducting a biennial emergency preparedness exercise in the calendar year 2010 and postpone it into the calendar year 2011. Granting an exemption from the requirement of conducting the biennial exercise will not pose an undue risk to public health and safety and will ensure that focus is maintained on plant safety and security.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed action is an exemption from the requirements of conducting a biennial emergency preparedness exercise. Whether or not the exercise is conducted would have no effect on the environment since any outdoor activity during an exercise is limited to minimal use of roads and highways. The staff has concluded that the changes would not significantly affect plant safety. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Updated Safety Analysis Report. There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed changes.

There are no federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action. The proposed action is not subject to any environmental quality standards or requirements imposed by Federal, State, regional, or local agencies having responsibility for environmental protection.

The details of the staff's safety evaluation will be provided in the exemption issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Enrico Fermi Atomic Power Plant, Unit 2, NUREG–0769, dated August 1981, as supplemented with Addendum No. 1 in March 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on November 22, 2010, the staff consulted with the State official, Mr. Ken Yale, of the Michigan Department of Natural Resources and Environment regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 3, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102230442), as supplemented by letters dated October 22, 2010 (ADAMS Accession No. ML102950490) and November 15, 2010 (ADAMS Accession No. ML103200126). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of December, 2010.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–32425 Filed 12–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on January 13–15, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (74 FR 65038–65039).

Thursday, January 13, 2011, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Aircraft Impact Assessment for the Revised AP1000 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the Aircraft Impact Assessment for the revised AP1000 Design.

[**Note:** A portion of this session may be closed in order to protect unclassified safeguards information, pursuant to 5 U.S.C. 552b(c)(3), and information designated as proprietary by Westinghouse, pursuant to 5 U.S.C. 552b(c)(4).]

10:15 a.m.–12 p.m.: Final Safety Evaluation Report Associated With the Vogtle Units 3 and 4 Combined License Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Southern Nuclear Company, and NuStar Energy regarding the Final Safety Evaluation Report associated with the Vogtle Units 3 and 4 Combined License Application.

[**Note:** A portion of this session may be closed in order to protect information designated as proprietary by Westinghouse pursuant to 5 U.S.C. 552b(c)(4).]

2 p.m.–3:30 p.m.: Draft Final Revision 2 to Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and Draft Final Revision 1 to RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications" (Open) The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final Revision 2 to RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis"; Draft Final Revision 1 to RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications"; and the staff's reconciliation of public comments.

3:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

[**Note:** A portion of this session may be closed in order to protect unclassified safeguards information, pursuant to 5 U.S.C. 552b(c)(3), and information designated as proprietary by Westinghouse, pursuant to 5 U.S.C. 552b(c)(4).]

Friday, January 14, 2011, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Draft Final Rule and Regulatory Guidance Regarding Enhancements to Emergency Preparedness Regulations (Open): The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final rule, "Enhancements to Emergency Preparedness Regulations"; Regulatory Guide 1.219, "Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors"; Interim Staff Guidance (ISG) NSIR/DPR–ISG–01,"Emergency Planning for Nuclear Power Plants"; and NUREG/CR–7002, "Criteria for Development of Evacuation Time Estimate Studies."

10:45 a.m.–12:15 p.m.: Staff Assessment of the RAMONA5–FA Code (Open/Closed): The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AREVA regarding the staff's assessment of the RAMONA5–FA code.

[**Note:** A portion of this session may be closed in order to protect information designated as proprietary by AREVA pursuant to 5 U.S.C. 552b(c)(4).]

1:15 p.m.–2:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments.

[**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:45 p.m.–3 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

3:15 p.m.–4:15 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to protect unclassified safeguards information, pursuant to 5 U.S.C. 552b(c)(3), and information designated

as proprietary by Westinghouse or AREVA, pursuant to 5 U.S.C 552b(c)(4).]

Saturday, January 15, 2011 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. **[Note:** A portion of this session may be closed in order to protect unclassified safeguards information, pursuant to 5 U.S.C. 552b(c)(3), and information designated as proprietary by Westinghouse or AREVA, pursuant to 5 U.S.C 552b(c)(4).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Ms. Ilka Berrios, Cognizant ACRS Staff (Telephone: 301–415–3179, E-mail: *Ilka.Berrios@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: December 20, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–32431 Filed 12–23–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of The ACRS Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on AP1000 will hold a meeting on January 10–11, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Monday, January 10, 2011—8:30 AM until 5:00 PM and Tuesday, January 11, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review the Final Safety Evaluation Report (FSER) associated with the Virgil C. Summer Combined License Application. The Subcommittee will hear presentations by and hold discussions with representatives of South Carolina Electric & Gas, the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or *E-mail: Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: December 20, 2010.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–32428 Filed 12–23–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Express Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing of a request with the Postal Regulatory

Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on December 16, 2010, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Express Mail Contract 10 to Competitive Product List.* Documents are available at *http://www.prc.gov,* Docket Nos. MC2011–12, CP2011–48.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–32373 Filed 12–23–10; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing of a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on December 16, 2010, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 32 to Competitive Product List.* Documents are available at *http://www.prc.gov,* Docket Nos. MC2011–11, CP2011–47.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–32374 Filed 12–23–10; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing of a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on December 16, 2010, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 31 to Competitive Product List.* Documents are available at *http://www.prc.gov,* Docket Nos. MC2011–10, CP2011–46.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–32375 Filed 12–23–10; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: Postal Service notice of filing of a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List pursuant to 39 U.S.C. 3642 and 3632(b)(3).

DATES: December 27, 2010

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on December 15, 2010, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 30 to Competitive Product List.* Documents are available at *http://www.prc.gov,* Docket Nos. MC2011–9, CP2011–44.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–32377 Filed 12–23–10; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form S–3; OMB Control No. 3235–0073; SEC File No. 270–61.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–3 (17 CFR 239.13) is used by issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–3 gives investors the necessary information to make investment decisions regarding securities offered to the public. Form S–3 takes approximately 459 hours per response and is filed by approximately 2,065 issuers annually. We estimate that 25% of the 459 hours per response (114.75 hours) is prepared by the issuer for a total annual reporting burden of 236,959 hours (114.75 hours per response × 2.065 responses).

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: December 20, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32372 Filed 12–23–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63575; File No. SR–Phlx–2010–176]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Alpha Index Options

December 17, 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 December 10, 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 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, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b-4 thereunder,[4] proposes to amend certain of its rules to provide for the listing and trading of options on NASDAQ OMX Alpha Indexes SM (the "Alpha Indexes") on the Exchange's electronic trading platform for options, Phlx XL.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on Alpha Indexes, a family of indexes developed by NASDAQ OMX Group, Inc. ("Nasdaq"). Alpha Indexes measure relative total returns of one underlying stock and one exchange traded fund share ("ETF") underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair").[6] Thus, an Alpha Index measures the relative total return of one stock and one ETF. The first component identified in an Alpha Pair (the "Target Component") is measured against the second component identified in the Alpha Pair (the "Benchmark Component").

At this time the Exchange is requesting Commission approval to list and trade Alpha Index options only on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. The Exchange will not list Alpha Index options on other Alpha Pairs without filing a proposed rule change seeking Commission approval for the listing and trading of any such additional Alpha Pairs.

Index Design and Calculation

In order to calculate an Alpha Index, Nasdaq measures the total return performance of the Target Component relative to the total return performance of the Benchmark Component, based upon prices of transactions on the primary listing exchange of each underlying component. Any Target Component or Benchmark Component upon which an Alpha Index is based will meet the Exchange's listing standards and options overlying them will already be listed and traded on the Exchange. Each Alpha Index will initially be set at 100.00.

In order to calculate an Alpha Index, Nasdaq first calculates a daily total return for both the Target Component and the Benchmark Component of the Alpha Pair. For example, to calculate the daily total return today, the previous day's closing market price for the component would be subtracted from today's closing market price for the component to determine a price difference (the "Price Difference"). The Price Difference would be added to any declared dividend if today were an "ex-dividend" date to yield the Price Plus Dividend Difference for the component. The Price Plus Dividend Difference for the component is then divided by the previous trading day's closing market price for the component and the result is rounded, using simple rounding, to four decimal places to yield the total daily return.

The total daily return for each component is then added to the whole number one (*e.g.,* 0.0156 plus 1 equals 1.0156) which permits the ultimate Alpha Index to be expressed in percentage terms. This figure for the Target Component is then divided by the comparable figure for the Benchmark Component, and then multiplied by previous trading day's closing Alpha Index value. The resulting level depicts the Target Component's total return performance versus that of the previous trading day.

The following example illustrates the Alpha Index calculation for ABC stock as against SPY.[7]

Step 1.) For both ABC and SPY, the previous trading day's closing market price is subtracted from today's closing market price with the result added to any dividend declared today as the "ex-dividend" date. For example, today's closing price for ABC (214.01) minus the previous day's closing price (210.73) equals 3.28. Today is not an ex-dividend date for ABC; therefore, nothing is added to 3.28. Similarly, today's closing price for SPY (113.33) minus the previous trading day's closing price (111.44) equals 1.89. Today is not an ex-dividend date for SPY; therefore, nothing is added to 1.89.

Step 2.) The step one result is divided by the previous trading day's closing market price and the new result is rounded, using simple rounding, to four decimal places to yield the daily total return. For ABC, 3.28 would be divided

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[6] Total return measures performance (rate of return) of price appreciation plus dividends over a given evaluation period.

[7] Daily total return values and Alpha Index values will be updated based upon prices of each reported transaction in the primary listing market. In the example below, closing prices are used simply for purposes of illustration.

by 210.73 to yield a daily total return of 0.0156. Similarly, for SPY, 1.89 would be divided by 111.44 and yield a daily total return of 0.0170.

Step 3.) The step two results above are added to the whole number one. For ABC, the daily total return of 0.0156 would be added to 1 for a result of 1.0156. For SPY the daily total return of 0.0170 would be added to 1 for a result of 1.0170.

Step 4.) In order to calculate the Alpha Index, the 1.0156 ABC figure is divided by the 1.0170 SPY figure and then multiplied by the previous trading day's closing Alpha Index value. Thus, assuming in the example that the previous trading day's closing Alpha Index value was 100.00, today's closing Alpha Index value would be 99.86 ($1.0156/1.0170 \times 100.00 = 99.86$). The 99.86 index level reflects that ABC's total return performance today versus yesterday was −.14% relative to SPY.

In the event of a corporate event which eliminates one of the underlying components of an Alpha Pair, Nasdaq will cease calculation of the Alpha Index for that Alpha Pair and all outstanding option positions will be immediately settled at the last disseminated price of that Alpha Index. In the event of a corporate event such as a spin off that affects the price of one of the underlying components, Nasdaq will make an appropriate one-time adjustment to the price of the underlying component used in the calculation to ensure that the Alpha Index continues to reflect the daily total return of the component.

Alpha Index values will be disseminated every second over the NASDAQ OMX Global Index Data Service (GIDS), which also disseminates the NASDAQ–100 index, the spot values for the PHLX currency options and the PHLX sector indexes.[8]

Listing Requirements

Alpha Index options will be listed only on Alpha Indexes comprised of Alpha Pairs that are actively traded. Rule 1009A, Designation of the Index, is being amended to provide that at the time of listing an Alpha Index option, options on each underlying component will also be listed and traded on the Exchange and will meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months. Following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet the continued listing standards set forth by Exchange Rule 1010, Withdrawal of Approval of Underlying Securities or Options. Additionally, each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months.

Finally, no Alpha Index option will be listed unless and until options overlying each of the Alpha Index component securities have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts. Following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet this options average daily volume standard.

Index Option Trading

Strike prices will be set to bracket Alpha Indexes in 1 point increments; thus, the interval between strike prices will be no less than $1.00.[9] Phlx anticipates less volatility in Alpha Index options than in existing stock options. Additionally, options on components of an Alpha Pair may also have strikes with $1.00 strikes. The Exchange therefore believes that $1.00 strike intervals are appropriate for this product. The Exchange proposes to list series at $1 or greater strike price intervals for each Alpha Index option, and to list at least two strike prices above and two strike prices below the current value of each Alpha Index option at about the time a series is opened for trading on the Exchange. The Exchange would also list additional strike prices at any price point, with a minimum of a $1.00 interval between strike prices, as required to meet the needs of customers.

Under Phlx Rule 1033A, Meaning of Premium Bids and Offers, bids and offers in index options are to be expressed in terms of dollars and decimal equivalents of dollars per unit of the index (*e.g.,* a bid of 5.50 would represent a bid of $5.50 per unit). The minimum tick size for series trading below $3 will be 0.05 and for series trading at or above $3 the minimum tick will be 0.10; provided, however, that if options on either component of an Alpha Pair have a minimum tick size of 0.01, options on the Alpha Index will also have a minimum tick size of 0.01.[10]

Pursuant to Rule 1047A(c), trading in Alpha Index options may be halted with the approval of an Options Exchange Official, whenever trading on the primary market in one of the Alpha Pair components is halted or suspended. Additionally, trading shall be halted whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Rule 1047(c) is being amended to provide that the Exchange will also halt trading in the Alpha Index option whenever trading is halted in an option overlying one or both of the components of the Alpha Pair.[11] Finally, if Nasdaq should cease calculation of the Alpha Index due to a corporate event (such as a merger) affecting one or more components of the Alpha Pair, the Exchange will halt trading in the option and all open contracts will be immediately settled at the last Alpha Index price to be disseminated. Re-openings are conducted pursuant to Rule 1047(d), which is being amended so that it clearly applies to Alpha Indexes in addition to stock indexes.

Rule 1092, Obvious Errors and Catastrophic Errors, is being amended to provide that Alpha Index option trades on the Exchange will be nullified pursuant to Section (c)(iv)(C) of that rule if the trade occurred during a trading halt on the primary market in either component security of the Alpha Index. The word "percent" is added to the previous clause applicable to stock index options to correct an inadvertent omission in the existing rule text.

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be at least two expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available. The trading hours for options on the Alpha Indexes will be from 9:30 AM to 4:15 PM (Philadelphia Time).[12] Alpha Index options are index options that are available for FLEX trading.[13]

[8] *See http://www.nasdaqtrader.com/Trader.aspx?id=globalindexDS.*

[9] *See* Exchange Rule 1101A, Terms of Option Contracts, as proposed to be amended.

[10] *See* Exchange Rule 1034, Minimum Increments, as proposed to be amended.

[11] *See* Exchange Rule 1047A, Trading Rotations, Halts or Reopenings.

[12] *See* Exchange Rules 1101A, Terms of Option Contracts, Commentary .01, and 101, Hours of Business.

[13] *See* Exchange Rule 1079, FLEX Index, Equity and Currency Options, as proposed to be amended. The Exchange is proposing that separate position limits apply to FLEX Alpha Index options at the same levels applicable to non-FLEX Alpha Index options.

Exercise and Settlement

Options on any Alpha Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 PM (Philadelphia Time) on the last day of trading. Exercise will result in delivery of cash on the business day following expiration. Alpha Index options will be A.M.-settled. The exercise settlement value will be based upon the opening prices of the individual stock or ETF from the primary listed market on the last trading day prior to expiration (usually a Friday).

The exercise settlement amount of an Alpha Index option will be equal to the difference between the exercise settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of Exchange holidays, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Clearing

Alpha Index options are "Strategy Based Options" that will be cleared by the Options Clearing Corporation.

Surveillance

The surveillance for opening price manipulation will be in place for the launch of options on Alpha Indexes and other existing surveillance patterns will be utilized to monitor trading in options on each Alpha Index. The Exchange represents that these surveillance procedures are adequate to monitor the trading of options on Alpha Indexes. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon.

Position Limits

The Exchange is proposing that the position limit for an option on an Alpha Index shall be 60,000 contracts on the same side of the market. For purposes of determining compliance with position limits, positions in Alpha Index options will be aggregated with positions in equity options on the underlying securities.[14] All position limit hedge exemptions will apply. Section (a) of Commentary .01 to Rule 1001A, Position Limits, is being amended by the addition of clause (iii) providing that each Alpha Index option position to be exempted under the index hedge exemption must be hedged by a position in each of the component securities underlying the Alpha Index.

Margin

The Exchange will set customer margin levels for Alpha Index options at the level of the higher of the margin required for options on the Target Component or the margin required for the Benchmark Component.[15]

Exchange Rules Applicable

Except as modified herein, the Exchange Rules 1000A–1107A, *Rules Applicable to Trading of Options on Indices,* will be applicable to Alpha Index options. The Exchange is proposing minor amendments to reflect trading of Alpha Index options which are not narrow-based or broad-based stock index options, which the Exchange currently trades, but rather strategy-based securities index options based upon an index whose construction and calculation differs from that of stock index options.

Systems Capacity

Additionally, the Exchange affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of options on Alpha Indexes. The Exchange also has been informed that OPRA has the capacity to support such new series.

Customer Protection

Exchange rules designed to protect public customers trading in options would apply to Alpha Index options. Phlx Rule 1026 is designed to ensure that options, including Alpha Index options are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Phlx Rule 1024, applicable to the conduct of accounts, Phlx Rule 1025 relating to the supervision of accounts, Phlx Rule 1028 relating to confirmations, and Phlx Rule 1029 relating to delivery of options disclosure documents also would apply to trading in Alpha Index options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that it will permit trading in options based on Alpha Indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–176 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.

[14] *See* Exchange Rule 1001A, Position Limits, as proposed to be amended.

[15] *See* Exchange Rule 721, Proper and Adequate Margin, as proposed to be amended.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–Phlx–2010–176. 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 the filing also will be available for inspection and copying at the principal office of the Exchange.[18] 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–2010–176 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32382 Filed 12–23–10; 8:45 am]

BILLING CODE 8011–01–P

[18] The text of the proposed rule change is available on the Commission's Web site at *www.sec.gov.*

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63569; File No. SR–Phlx–2010–178]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule

December 17, 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 December 15, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "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. Phlx has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to eliminate the Examinations Fee, amend the Exchange's Permit Fees and Application Fee and create a Transfer of Affiliation Fee. The Exchange also proposes to make other technical non-substantive amendments to the proposal to update the Fee Schedule by removing obsolete language and adding clarifying language.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative on January 3, 2011, except for the Lapsed Application Fee which the Exchange proposes to be operative on the approval of proposed rule change SR–Phlx–2010–148.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Exchange's Examination Fee, amend the Permit Fee and Application Fee and propose a new Transfer of Affiliation Fee.

Examinations Fee

The Exchange is proposing to eliminate the Examinations Fee. The Exchange believes that the Examinations Fee is no longer necessary because the number of off-floor traders for which the Exchange is the Designated Examining Authority ("DEA") has declined to under ten member organizations with a limited number of off-floor trades. Also, the Exchange believes that members should bear the burden of certain Exchange expenses associated with membership equally. The Exchange proposes to amend its Permit Fees, as described below, to differentiate between members who transact business at the Exchange and those members who do not transact business at the Exchange. Members who transact business at the Exchange pay transaction fees and other types of fees, as compared to members who do not transact business at the Exchange and do not pay such fees but still incur costs for the Exchange related to membership. The Exchange believes that eliminating the Examinations Fee and creating the proposed Permit Fees spreads Exchange costs equally among members.

Currently, the Exchange assesses an Examinations Fee based on a tiered schedule. The fee is applicable to member organizations for which the Exchange is the DEA.[6] The Exchange assesses the monthly Examinations Fee as follows: $2,100 is assessed to a member organization that has from 0–10 off-floor traders; $2,600 is assessed to a member organization that has from 11–50 off-floor traders; $5,000 is assessed to a member organization that has from 51–200 off-floor traders; and $12,500 is assessed to a member organization that has over 200 off-floor traders.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 63318 (November 16, 2010), 75 FR 71155 (November 22, 2010) (SR–Phlx–2010–148).

[6] Member Organizations operating through one or more Exchange markets that are able to demonstrate that 25% or more of its revenue, as reflected in the most recently submitted FOCUS Report or transactions as reflected on its purchased and sales blotter, are derived from securities transactions on the Exchange are exempt from the Examinations Fee.

Permit Fees

The Exchange is proposing to amend its current Permit Fee which is $1,000 per month. The Exchange proposes to amend this Permit Fee by instead assessing two different Permit Fees based on whether a member is transacting business on the Exchange.

The Exchange proposes to assess members who are transacting business on the Exchange a Permit Fee of $1,100 per month. The Exchange proposes to assess members who are not transacting business on the Exchange a Permit Fee of $7,500 per month. A member or member organization would not be assessed the $7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) Solely a PSX Participant [7] or (ii) engaged in any options business at the Exchange in a particular month. That member would instead be assessed the $1,100 monthly Permit Fee. In addition, a member or member organization that sponsors an options participant [8] would pay an additional Permit Fee for each sponsored options participant.

The Exchange is proposing to increase the current Permit Fee, the addition of a Permit Fee for members not transacting business and a fee for sponsored participants to recoup costs associated with the administration of its members.

Application Fee

The Exchange is proposing to amend its Application Fee to add another Application Fee for Lapsed Applications. The title of the new fee will be "Application Fee for Lapsed Applications" and the Exchange would assess $350 to submit the application after a lapse. The Application Fee for Lapsed Applications is the same as the current Application Fee.[9] The fee is proposed to recoup administrative expenses incurred by the Exchange to review new applications for membership.

Pursuant to Exchange Rule 900.2, applicants desiring membership in the Exchange are required to submit information in a form prescribed by the Membership Department. The Exchange recently proposed to amend its rules to require persons seeking membership to the Exchange to provide all information and subsequent requests from the Membership Department for information within a 90 calendar day period, otherwise the application lapses.[10] If an application lapses, the applicant would be required to resubmit a new application.[11] The Exchange would not refund the fee associated with submitting an application and the applicant would be required to pay a new fee to resubmit the application.

Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market today are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee.[12] The Exchange would not assess the Application Fee for Lapsed Applications because the Application Fee is currently waived.

The Exchange also proposes to amend the manner in which the Application and Initiation Fees are assessed. Currently, the Application Fee is charged only upon the first such approval of an applicant and is non-recurring; however, a lapse for 6 months or more necessitates the payment of an Application Fee for reapplication.[13] For example, if a member ceases to be a member on January 1st and applies on or after July 1st of that year to once again become a member, an Application Fee is charged to that applicant.

The Exchange proposes to discontinue this practice of allowing a former member to reapply without being assessed an Application Fee so long as the former member reapplies for membership with the Exchange within 6 months of terminating membership. The Exchange proposes to assess the Application Fee each time an applicant applies for membership, notwithstanding the fact that the applicant may have previously been a member of the Exchange.[14]

The Exchange is required to examine each applicant and perform all the necessary diligence for reviewing an applicant for membership.[15] The ability to assess the Application Fee on former members who have a lapse in their membership would allow the Exchange to recoup administrative expenses incurred by the Exchange to determine if the lapsed member still meets all the membership requirements.

Transfer of Affiliation Fee

The Exchange proposes to create a $350 fee titled a "Transfer of Affiliation Fee." The Exchange would assess this fee on permit holders who apply to transfer their affiliation from one Exchange member to another Exchange member, so long as there is no lapse in membership status.

The Exchange has received requests from permit holders to affiliate with a different member organization. Today, the Exchange is required to assess an Application Fee [16] on applicants for membership, unless the member reapplies within 6 months. The Exchange is proposing to eliminate the ability of a permit holder to lapse an application for 6 months as mentioned herein.

The Exchange is also proposing to treat permit holders who apply to transfer his or her affiliation from one member to another member as a transfer instead of as a new applicant, so long as the membership is continuous (permit was continuously held by the permit holder). Pursuant to Exchange Rule 908(b), no individual shall hold more than a single Series A–1 permit. A permit holder who desires to transfer his or her affiliation to a different member is required today to cancel their current permit and apply for another permit and incur an Application Fee [17]

[7] Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. *See* Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR–Phlx–2010–54).

[8] *See* Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

[9] Application Fees are used to help offset Exchange clerical and administrative expenditures related to application processing including, but not limited to, regulatory background checks, registration and fingerprint card processing.

[10] *See* Securities Exchange Act Release No. 63318 (November 16, 2010), 75 FR 71155 (November 22, 2010) (SR–Phlx–2010–148).

[11] The purpose of the new application would be to update all information to provide the Membership Department current information on which to base a decision to accept the applicant for membership.

[12] *See* Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR–Phlx–2010–54).

[13] *See* Securities Exchange Act Release No. 47148 (January 9, 2003), 68 FR 2614 (January 17, 2003) (SR–Phlx–2002–79).

[14] An Initiation Fee would also be assessed. *See* footnote 16.

[15] *See* Exchange Rule 908(b) which states, "A Series A–1 permit shall only be issued to an individual or to a corporation meeting the requirements of Section 12–4 of the By-Laws, who meets the eligibility and application requirements set forth in Article XII of the By-Laws and in these rules, including, without limitation, Rule 972. * * *"

[16] The Initiation Fee is $1,500 and is assessed upon the issuance of a permit. The initiation fee is payable by a non-member upon election to membership and is non-recurring unless there is a lapse in membership and the former member subsequently applies for admission. *See* Securities Exchange Act Release No. 20651 (February 23, 1984), 49 FR 6817 (SR–Phlx–84–2).

[17] The Application Fee would not apply today if a lapse in membership was not more than 6 months. The Exchange is proposing to eliminate this treatment with this proposal.

and an Initiation Fee.[18] In this scenario, the Membership Department would not be required to perform the same diligence that would be necessary for a permit holder whose membership lapsed for any period of time. The Membership Department would be required to issue another permit and cancel the current permit and amend the affiliation in its records.

The Exchange proposes to assess a Transfer of Affiliation Fee of $350[19] and waive the Initiation Fee of $1,500 because the administrative time and clerical expenditures are substantially less for this type of request as compared to a new applicant or a former permit holder who left the Exchange, canceled his or her permit and is seeking to become a permit holder once again. The Exchange is proposing to assess only a Transfer of Affiliation Fee and waive the Initiation Fee because the Transfer Fee alone should allow the Exchange to recoup the costs of affiliating a current Exchange permit holder with a different member and issuing a new permit.

Technical Amendments

The Exchange is proposing to delete the language in Section III concerning Sector Index Options, related to the incentive program for Options Overlying QNET. This $.20 per contract transaction promotional pricing will expire on December 31, 2010,[20] and the Exchange would instead assess members the applicable sector index options transaction charges, by market participant, on January 3, 2011.[21] For example, for transactions in QNET sector index options, a customer would no longer be assessed the $.20 per contract on trade date January 3, 2011, but instead would be assessed the option transaction charge, which is $.44 per contract.[22] The Exchange proposes to remove this text which will be obsolete on January 3, 2011.[23]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act—[24] in general, and furthers the objectives of Section 6(b)(4) of the Act—[25] 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 eliminating the Examinations Fee is reasonable because the fee is no longer necessary with the decline in off-floor traders and because the Permit Fee, as proposed, would assist the Exchange is equally distributing costs associated with membership. The Exchange believes that eliminating the Examinations Fee is equitable because the Exchange would not assess such a fee on any member organization for which it is the DEA.

The Exchange believes that increasing the current Permit Fee and adding a new category of fees for members not transacting business on the Exchange is reasonable. Member organizations that are not active at the Exchange receive the same benefits as members who are actively transacting business at the Exchange. The members who are transacting business at the Exchange are assessed other fees for conducting business while members not transacting business at the Exchange and maintaining a membership are not incurring such fees. The Exchange also believes that the distinction in fees is equitable because it is similar to fees assessed by the International Securities Exchange LLC ("ISE"), which distinguish between active and inactive memberships.[26]

The Exchange also believes that the additional Permit Fee assessed on members/member organizations for each sponsored participant is reasonable because the member is benefitting from the additional access that is granted to the sponsored participant from the permit. The fee is equitable because it is similar to fees assessed by C2 Options Exchange, Incorporated ("C2") and the Chicago Board Options Exchange, Incorporated ("CBOE").[27]

The Exchange expends resources in processing applications for members. The determination to admit a person for membership in the Exchange is contingent on the information provided in the application. After a 90 day calendar period has elapsed, the information provided by the applicant is stale and no longer a reasonable basis for the Exchange to make a determination on admitting a person for membership. The Membership Department expends a considerable amount of resources requesting updates from members and researching information to make a reasonable determination when an application is outdated. Similarly, the Exchange is proposing to eliminate the waiver for members who lapse for less than 6 months for similar reasons involving costs and resources.

The Exchange believes that imposing a Transfer of Affiliation Fee on members desiring to transfer their affiliation and waiving the Initiation Fee is reasonable because the Exchange is proposing to only apply such a fee to members who have no lapse in their membership. Additionally, the Exchange believes that waiving the Initiation Fee is equitable because there is less administrative cost associated with transferring an affiliation as compared to a new application.

Finally, the Exchange believes the proposed technical amendments to remove obsolete language will avoid confusion for members.

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 Regarding 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[28] and subparagraph (f)(2) of Rule 19b–4 thereunder[29] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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

[18] *See* footnote 16.

[19] This is the same amount that is currently assessed for an Application Fee.

[20] *See* SR–Phlx–2010–177 (a proposal to expand the Sector Index Options promotional pricing for options overlying QNET to December 31, 2010).

[21] *See* SR–Phlx–2010–177.

[22] *See* SR–Phlx–2010–177.

[23] *See* SR–Phlx–2010–177.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] *See* Securities Exchange Act Release No. 45816 (April 24, 2002), 67 FR 30406 (May 6, 2002) (SR–ISE–2002–11) (a rule change that distinguishes pricing for competitive market makers ("CMM") who actively trade as compared to CMMs who do not actively trade on ISE.) *See also* primary market maker fees (active and inactive) on ISE's Schedule of Fees.

[27] *See* Securities Exchange Act Release No. 63175 (October 25, 2010), 75 FR 66813 (October 29, 2010) (SR–C2–2010–006) (a rule change to impose sponsored user fees). See also CBOE's Fees Schedule at sponsored access fees.

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

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–2010–178 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–2010–178. 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 publicly available. All submissions should refer to File Number SR–Phlx–2010–178 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32376 Filed 12–23–10; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.000 (3) percent for the January–March quarter of FY 2011.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (*see* 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Richard C. Blewett,

Acting Director, Office of Financial Assistance.

[FR Doc. 2010–32311 Filed 12–23–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–61]

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 petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 18, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1195 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: Frances Shaver, ARM–207, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 20, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–1195.

Petitioner: Avianca Airlines.

Section of 14 CFR Affected: Part 121, Appendix M (Item 18).

Description of Relief Sought: Avianca Airlines is requesting relief from the

[30] 17 CFR 200.30–3(a)(12).

requirement to have a cockpit voice recorder and a flight data recorder that records all datalink messages as required by the certification rule for its Airbus A320–214 (MSN 4567) airplane.

[FR Doc. 2010–32346 Filed 12–23–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2010–0048]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection:

Metropolitan and Statewide Transportation Planning. The information collected for this program is necessary to identify and evaluate the transportation issues and needs in each urbanized area and throughout every state. The **Federal Register** notice with a 60-day comment period soliciting comments was published on October 13, 2010.

DATES: Comments must be submitted before January 26, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Metropolitan and Statewide Transportation Planning.

Abstract: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) jointly carry out the federal mandate to improve urban and rural transportation. 49 U.S.C. 5303 and 5304 and 23 U.S.C. 134 and 135 authorize the use of federal funds to assist Metropolitan Planning Organizations (MPOs), States, and local public bodies in developing transportation plans and programs to serve the transportation needs of urbanized areas over 50,000 in population and other areas of States outside of urbanized areas. The information collection activities involved in developing the Unified Planning Work Program (UPWP), the Metropolitan Transportation Plan, the Statewide Transportation Improvement Plan, the Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP) are necessary to identify and evaluate the transportation issues and needs in each urbanized area and throughout every state. These products of the transportation planning process are essential elements in the reasonable planning and programming of federally funded transportation investments.

In addition to serving as management tools for MPOs and State DOTs, the UPWP and State Planning and Research (SP&R) Work Program are used by both FTA and FHWA to monitor the transportation planning activities of those agencies. It is also needed to establish national out year budgets and regional program plans, develop policy on using funds, monitor State and local compliance with national technical emphasis areas, respond to Congressional inquiries, prepare Congressional testimony, and ensure efficiency in the use and expenditure of federal funds by determining that planning proposals are both reasonable and cost-effective. 49 U.S.C. 5303 and 23 U.S.C.134(h) require the development of TIPs for urbanized areas; STIPs are mandated by 49 U.S.C. 5304 and 23 U.S.C. 235(f) for an entire State. After approval by the Governor and MPO, metropolitan TIPs in attainment areas are to be incorporated directly into the STIP. For nonattainment areas, FTA/FHWA must make a conformity finding on the TIPs before including them into the STIP. The complete STIP is then jointly reviewed and approved or disapproved by FTA and FHWA. These conformity findings and approval actions constitute the determination that States are complying with the requirements of 23 U.S.C. 235 and 49 U.S.C. 5303 and 5304 as a condition of eligibility for federal-aid funding. Without these documents, approvals and findings, capital and/or operating assistance cannot be provided.

Estimated Total Annual Burden: 270,756 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments are Invited On: 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: December 20, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–32335 Filed 12–23–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2010–0047]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection:

49 U.S.C. Part 611—Major Capital Investment Projects. The information collected for this program will be used is to evaluate proposed New and Small Starts projects. The **Federal Register** notice with a 60-day comment period soliciting comments was published on October 13, 2010.

DATES: Comments must be submitted before January 26, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Part 611—Major Capital Investment Projects

Abstract: On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted. Sections 3011(d)(5) and 3011(e)(6) of SAFETEA–LU require FTA to issue regulations on the manner in which candidate projects for major capital investment grants for new fixed guideway systems, extensions to existing fixed guideway systems, or significant corridor based bus investments ("New Starts" and "Small Starts") will be evaluated and rated for purposes of the FTA Capital Investment Grant program under 49 USC Section

5309. An Advanced Notice of Proposed Rulemaking (ANPRM) for this regulation was issued on January 30, 2006, (71 FR 22841). A Notice of Proposed Rulemaking (NPRM) was issued on August 3, 2007, (72 FR 43328). The NPRM was withdrawn on February 17, 2009, due to an intervening statutory change resulting from the passage of the SAFETEA–LU Technical Corrections Act in June 2008. Another ANPRM for the regulation was issued on June 2, 2010 (75 FR 31383). FTA is reviewing the comments received on the ANPRM, and at this time a date for publication of the NPRM is not known. FTA has a longstanding requirement to evaluate proposed projects against a prescribed set of statutory criteria at specific points during the projects' development including when they seek to enter preliminary engineering, final design, and a Full Funding Grant Agreement. In addition, FTA must report on its evaluations and ratings annually to Congress. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) established in law a set of criteria that proposed projects had to meet in order to be eligible for federal funding. The requirement for summary project ratings has been in place since 1998. Thus, the requirements for project evaluation and data collection for New Starts projects are not new. One addition included in SAFETEA–LU is the Small Starts program. The Small Starts program enables smaller cost projects with a smaller requested share of Section 5309 major capital investment funds to progress through a simplified and streamlined project evaluation and data collection process. In general, the information used by FTA for New and Small Starts project evaluation and rating should arise as a part of the normal planning process.

FTA has been collecting project evaluation information from project sponsors under the existing OMB approval for this program (OMB No. 2132–0561). However, due to modifications in the project evaluation criteria and FTA evaluation and rating procedures for the New Starts program and the addition of the Small Starts program, it became apparent that some information now required might be beyond the scope of ordinary planning activities. In particular, SAFETEA–LU creates additional requirements for before-and-after data collection as a condition of obtaining a Full Funding Grant Agreement (FFGA) or a Project Construction Grant Agreement (PCGA).

Estimated Total Annual Burden: 37,070 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW. Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued On: December 20, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–32336 Filed 12–23–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for the Metro Gold Line Foothill Extension, Azusa to Montclair in Los Angeles and San Bernardino Counties, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as the federal lead agency, and the Metro Gold Line Foothill Extension Construction Authority (Construction Authority) intend to prepare an Environmental Impact Statement (EIS) for proposed transit improvements in the Foothill Extension Transit Corridor. FTA is the lead Federal agency with the Construction Authority as a co-lead agency for the National Environmental Policy Act (NEPA) process because the Construction Authority is seeking Federal funding for the proposed project. The proposed project is an extension of the existing Metro Gold Line light rail transit line, from Azusa to Montclair, with proposed stations in Glendora, San Dimas, La Verne, Pomona, Claremont and Montclair. The proposed project will improve mobility in eastern Los Angeles County and western San Bernardino County by introducing high-frequency transit service options; enhance the regional transit network by interconnecting existing and planned rail and bus transit lines; provide an alternative mode of transportation for commuters who currently use the congested I–210 corridor; improve transit accessibility for residents and employees who live and/or work along the corridor; and encourage a mode shift to transit, reducing air pollution and greenhouse gas emissions.

The EIS will be prepared in accordance with the requirements of NEPA and its implementing regulations. Prior to commencement of a Final EIS, a locally preferred alternative (LPA) will be identified and adopted by the Construction Authority Board and included in the Los Angeles County Metropolitan Transportation Authority (LACMTA) Constrained Long Range Transportation Plan (LRTP). LACMTA and the Construction Authority do not currently anticipate applying for 43 U.S.C. 5309 New Starts funding.

The Construction Authority will be preparing a joint EIS/EIR document to comply with NEPA and the California Environmental Quality Act (CEQA). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process (including providing comments on the scope of the Draft EIS), to announce that public scoping meetings will be conducted, and to invite participating and cooperating agencies.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to the Construction Authority on or before February 2, 2011 at the address below. *See* **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the EIS/EIR will be held on the following dates:

- Wednesday, January 12, 2011; 6 to 8 p.m. at the Ganesha Community Center, 1575 North White Avenue, Pomona, CA.
- Thursday, January 13, 2011; 6 to 8 p.m. at the Glendora Teen and Family Center, 241 West Dawson Street, Glendora, CA.
- Wednesday, January 19, 2011; 6 to 8 p.m. at the Oakmont Elementary School, 120 West Green Street, Claremont, CA.
- Thursday, January 20, 2011; 6 to 8 p.m. at the Ekstrand Elementary School,

400 North Walnut Avenue, San Dimas, CA.

The prior planning work, the project's purpose and need, and the description of alternatives will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Lisa Levy Buch, Director of Public Affairs, Metro Gold Line Foothill Extension Construction Authority, at (626) 305–7004, or *llevybuch@foothillextension.org.*

Scoping materials will be available at the meetings and are available on the Construction Authority's Web site (*http://www.foothillextension.org*). Hard copies of the scoping materials may also be obtained from Ms. Sylvia Beltran, Community Outreach Coordinator, Metro Gold Line Foothill Extension Construction Authority, at (626) 305–7012, or *sbeltran@foothillextension.org.*

An interagency scoping meeting will be held on Thursday, January 13, 2011, at 2 p.m. at the Glendora Teen and Family Center, 241 West Dawson Street, Glendora, CA. Representatives of Native American tribal governments and of all federal, state, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate and participate in the National Historic Preservation Act Section 106 Process.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Ms. Lisa Levy Buch, Director of Public Affairs, Metro Gold Line Foothill Extension Construction Authority, 406 E. Huntington Drive, Suite 202, Monrovia, CA 91016–3633, or via e-mail at *llevybuch@foothillextension.org.* The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone (213) 202–3950, e-mail *ray.tellis@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

A Draft EIS/EIR for Gold Line Phase II Pasadena to Montclair Foothill Extension was issued in April 2004 ("2004 DEIS/EIR"). A Notice of Availability was published in the **Federal Register** on May 7, 2004. Following the release of the 2004 DEIS/EIR, the public comment period, and input from the cities along the alignment, the Construction Authority Board approved a Locally Preferred Alternative (LPA) in August 2004 for the Pasadena to Azusa extension of the Gold Line Phase II Project. In March 2005, a Project Definition Report (PDR) was prepared to refine the station and parking lot locations, grade crossings, two rail grade separations, and traction power substation locations. Following the PDR, the Construction Authority Board approved a Revised LPA in June 2005. Between March and August 2005, station options in Claremont were added.

Subsequent to circulation of the 2004 DEIS/DEIR the Construction Authority decided to fund the Pasadena to Azusa extension of the Gold Line Phase II Project without Federal funding and the environmental impact assessment for Phase II no longer proceeded as a joint NEPA/CEQA document but as a CEQA document. The Pasadena to Azusa Extension project of the Gold Line Phase II Pasadena to Montclair Extension was certified under CEQA by the Construction Authority and a FEIR was completed in February 2007. Because the Construction Authority decided to fund the Pasadena to Azusa extension of the Gold Line Phase II Project without Federal funding, the FTA subsequently withdrew the Gold Line Phase II DEIS on June 25, 2010.

The Construction Authority will be seeking Federal funding for the Metro Gold Line Foothill Extension from Azusa to Montclair and an EIS will be prepared. To avoid confusion expressed about the terminology used in the 2004 DEIS/EIR (e.g. Phase I; Phase II, Segments 1 and 2), the proposed project described by this NOI, which was previously named Gold Line Phase II Segment 2, is now referred to as the Metro Gold Line Foothill Extension, Azusa to Montclair Project.

The proposed Metro Gold Line Foothill Extension, Azusa to Montclair Project, is included in the strategic unfunded element of the LACMTA 2009 LRTP. Various transit improvements were explored and opportunities identified in other studies such as the *Gold Line Phase II Extension Pasadena to Claremont Alternatives Analysis, Final Draft Report (January 9, 2003), and the Gold Line Phase II Pasadena to Montclair Foothill Extension Final Environmental Impact Report (2007)* which are available for review at the LACMTA Transportation Library, 15th Floor, One Gateway Plaza, Los Angeles, CA 90012, the Metro Gold Line Foothill Extension Construction Authority, 406 E. Huntington Drive, Suite 202, Monrovia, CA 91016–3633, and on the Construction Authority's Web site (*http://www.foothillextension.org*).

Project Initiation and Scoping

The FTA and the Construction Authority will prepare an EIS/EIR for the Metro Gold Line Foothill Extension Azusa to Montclair Project pursuant to 23 U.S.C. 139 and CEQA. The Construction Authority is serving as the local lead agency for purposes of CEQA. FTA is serving as the Federal lead agency and the Construction Authority as a co-lead agency for purposes of NEPA. FTA and the Construction Authority will invite interested Federal, State, Tribal, regional and local government agencies to be participating agencies under the provisions of Title 23 CFR 771.111.

Scoping is the process of determining the scope, focus, and content of an EIS. FTA and the Construction Authority invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: (1) Feasible alternatives that may better achieve the project's need and purposes with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives. NEPA "scoping" has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant.

Purpose and Need for the Project

The purpose of this project is to provide a high-capacity transportation improvement that responds to problems associated with the I–210, a freeway that is not able to accommodate current and forecasted peak-hour travel demands; respond to the limited bus routes and commuter rail service available in the study corridor; respond to problems associated with the corridor's congested arterial network; respond to issues associated with population and employment conditions and forecasts; respond to goals of the region and corridor to improve air quality and avoid or minimize impacts to natural and manmade environments.

Project Location and Environmental Setting

The proposed project is located in Los Angeles and San Bernardino Counties encompassing six adjoining cities that are located along I–210 and a railroad right-of-way, between the eastern boundary of Azusa on the west and Montclair on the east. The project area includes the cities of Glendora, San Dimas, La Verne, Pomona, and Claremont in Los Angeles County. In San Bernardino County, it includes the city of Montclair.

The Build Alternative is a Light Rail Transit (LRT) system that would begin at the current terminus of the Metro Gold Line at the Azusa-Citrus Station continuing east to Montclair.

Alternatives

The Gold Line Phase II Extension Pasadena to Claremont Alternatives Analysis, Final Draft Report (January 9, 2003), prepared for the Construction Authority, studied a number of alternatives within the study area. This analysis looked at a wide range of alignment and technology options aimed at serving the corridor transportation needs. These included a No-Build Alternative, a Transportation System Management (TSM) Alternative, as well as various modal alternatives. The initial analysis looked at enhanced bus service, bus rapid transit, LRT, commuter rail, diesel multiple units, high occupancy vehicle facilities, and fixed-guideway facilities. The alignment alternatives included the existing railroad right-of-way, the I–210 freeway, and local major arterials. Operations alternatives varied by mode starting with five-minute headways.

The three alternatives being evaluated include the No Build Alternative, TSM, and the Build Alternative. The freight rail alignment identified in the Alternatives Analysis Report with the LRT technology is the Build Alternative that will be analyzed. In addition, pursuant to 40 CFR 1502.14, the EIS will analyze any reasonable alternatives identified during scoping.

No-Build Alternative: The No-Build Alternative includes all highway and transit projects and operations that the region and LACMTA expect to be in place in 2035. The No-Build Alternative would not require construction of ancillary facilities other than those included in the projects comprising the alternative. The No-Build Alternative is LACMTA's 2009 LRTP adopted in October 2009. This 2009 LRTP includes a balance of vehicle and transit improvements, including an expanded bus and rail network. Projects within the 2009 LRTP that are relevant to the corridor are stated below.

- Transit projects include countywide (Los Angeles and San Bernardino Counties) bus service improvements; commuter rail (Metrolink) improvements; and light rail and heavy rail transit improvements.
- Freeway improvements include projects on freeways such as the extension of freeway Route 30/I–210 from Foothill Boulevard to I–15 (now completed) and the continuing extension of I–15 to I–215 in the future.
- Smart street projects include improvements such as synchronized traffic signals, on-street parking removal, frontage road and grade separation construction, and key intersection improvements to improve traffic flow.
- Arterial improvement projects include improvements to existing roadways.

Transportation System Management (TSM) Alternative: The EIS/EIR will evaluate transportation and environmental effects of modest improvements in the highway and transit systems beyond those in the No-Build Alternative. The TSM Alternative would include low-cost improvements to the No-Build Alternative to reduce delay and enhance mobility. The TSM Alternative would emphasize transportation system upgrades, such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, expanded park-and-ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

Build Alternative: The Build Alternative utilizes the existing LACMTA/Construction Authority and San Bernardino Associated Governments rights of way through the San Gabriel Valley for LRT service. The Build Alternative would extend the Metro Gold Line LRT system from the eastern boundary of Azusa to the Montclair TransCenter (approximately 11.4 miles) located in Montclair, bordering the city of Upland. The same LRT technology and the same types of system components would be used as the existing Metro Gold Line. The Build Alternative would include six new stations, with one in each of the cities along the corridor; Glendora, San Dimas, La Verne, Pomona, Claremont and Montclair. Potential station locations have been defined in consultation with the corridor cities. Parking facilities would be provided at each new station.

Eight traction power substations (TPSSs) would be constructed along the route in order to provide electrical power to the line. Where possible, TPSS sites would be located near a station. TPSS sites would be located within existing rail right of way or within properties to be acquired for stations or parking. The Build Alternative would include two LRT tracks throughout, and one freight track between the eastern boundary of Azusa and Pomona. In Pomona, the single freight track would then join up with the double Metrolink tracks and continue through to Montclair and beyond.

Probable Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and the Construction Authority will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. The probable impacts will be determined as part of the project scoping. Unless further screening illuminates areas of possible impact, resource areas will be limited to those identified during scoping. Measures to avoid, minimize, and mitigate adverse impacts will also be identified and evaluated.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), calls for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and the Construction Authority do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and the Construction Authority will not be able to identify all Federal and non-Federal

agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Community Outreach Coordinator identified above under **ADDRESSES.**

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR part 771). Related environmental procedures to be addressed during the NEPA process, include, but are not limited to the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800); Section 4(f) of the Department of Transportation Act (23 CFR part 774); and Executive Order 12898 on environmental justice.

Issued on: December 17, 2010.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. 2010–32337 Filed 12–23–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35450]

City of Maplewood, MN.—Acquisition Exemption—Right To Restore Rail Service Over a Railbanked Right-of-Way in Ramsey County, MN.

The City of Maplewood, Minn. (the City), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from BNSF Railway Company (BNSF) the right to restore rail service over a rail banked right-of-way, a distance of .67 miles, extending from milepost 7.19 to milepost 6.52 (the line),[1] in Ramsey County, Minn.

In the notice of exemption in *BNSF Railway Company—Abandonment Exemption—in Ramsay County, Minn.,* AB 6 (Sub.-No. 429X) (STB served Aug. 10, 2005), BNSF was authorized to abandon the line. Subsequent to that notice, BNSF and the City reached an agreement for rail banking the line. The agreement included a provision that, in exchange for payment of value, BNSF would convey to the City BNSF's right to restore service over the line's right-of-way.

Subsequently, in a quitclaim deed dated September 26, 2005, BNSF conveyed the line to the City along with BNSF's right to restore service over the right-of-way. The City explains that it did not know, at the time, that Board authorization was necessary for the City to acquire the right to restore rail service. The City now, after the fact, invokes the Board's authorization for that acquisition through a notice of exemption. The City states that it or an operator contracted by the City would operate over the line if service is restored.

In *King County, Wash.—Acquisition Exemption—BNSF Railway Company,* FD 35148, slip op. at 3–4 (STB served Sept. 18, 2009) (*King County*), the Board granted an individual exemption authorizing the conveyance of the right to restore rail service on a line to a county, explaining that the right to reactivate a rail banked line is not an exclusive right and would not preclude any other service provider from seeking Board authorization to restore rail service over the rail banked line if the county did not do so. In *King County,* slip op. at 4 n.5, both the county acquiring the right and the rail carrier selling that right "made clear that [the rail carrier did] not wish to retain any rights related to the segments." Likewise, here the notice indicates that BNSF did not wish to retain rights related to the line because, by quitclaim deed, BNSF conveyed to the City both the right-of-way itself and the right to restore service over the right-of-way.

The transaction is expected to be consummated on or after January 8, 2010 (30 days after the exemption was filed).

The City certifies that its projected annual revenues from the acquisition involved in this proceeding do not exceed those that would qualify it as a Class III carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 30, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35450, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 20, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–32297 Filed 12–23–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The line is between milepost 7.19, a point approximately 100 feet north of Interstate Highway I–694 in White Bear Township, and milepost 6.52, a point approximately 50 feet north of Beam Avenue in the City.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Penn Millers Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570; 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated immediately. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2010 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch,

3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 14, 2010.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2010–32299 Filed 12–23–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Health Outcomes Not Associated With Exposure to Certain Herbicide Agents; Veterans and Agent Orange: Update 2008

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority of the Agent Orange Act of 1991, Public Law 102–4 (codified in relevant part at 38 U.S.C. 1116), has determined that a presumption of service connection is not warranted based on exposure to herbicides used in the Republic of Vietnam during the Vietnam Era for any of the diseases, illnesses, or health effects identified in the July 24, 2009, National Academy of Sciences (NAS) report entitled "Veterans and Agent Orange: Update 2008" (Update 2008), except for hairy cell leukemia (HCL) and other chronic b-cell leukemias, Parkinson's disease, and ischemic heart disease. In this regard, the Secretary of Veterans Affairs determined, based upon the NAS report, that there is a positive association between exposure to herbicides and the subsequent development of HCL and other chronic b-cell leukemias, Parkinson's disease, and ischemic heart disease. The Secretary recently published a notice of proposed rulemaking to implement this decision. *See* 75 FR 14391 (Mar. 25, 2010).

The determination to not establish a presumption of service connection, based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era for any other of the diseases, illnesses, or health effects identified in the July 24, 2009, NAS report, does not in any way preclude VA from granting service connection for these diseases, including those specifically discussed in this notice, nor does it change any existing rights or procedures.

The Secretary's determinations regarding individual diseases are based on all available evidence in the 2008 report of the NAS and prior NAS reports. This notice generally states specific information only with respect to significant additional studies that were first reviewed by NAS in its 2008 report. Information regarding additional relevant studies is stated in VA's prior notices following earlier NAS reports, and generally will not be repeated here.

FOR FURTHER INFORMATION CONTACT: Gerald Johnson, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 461–9727. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the NAS to review and evaluate the available scientific evidence regarding associations between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure.

Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspected diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of disease among individuals exposed to herbicide agents during service in the Republic of Vietnam during the Vietnam era; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between herbicide exposure and the health outcome. Section 3 of Public Law 102–4 also requires that NAS submit reports on its activities every 2 years (as measured from the date of the first report) for a 10-year period. The Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103, extended this period until October 1, 2014.

Section 2 of Public Law 102–4, codified in pertinent part at 38 U.S.C. 1116(b) and (c), provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (*i.e.,* a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Section 2 of the Agent Orange Act of 1991 provided that the Secretary's authority and duties under that section would expire 10 years after the first day of the fiscal year in which NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, VA's authority under section 2 of the Agent Orange Act of 1991 expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103. Section 201(d) of that Act extended VA's authority under 38 U.S.C. 1116(b)–(d) through September 30, 2015.

Although 38 U.S.C. 1116 does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." The Secretary reviews studies that report a positive relative risk and studies that report a negative relative risk of a particular health outcome. He then determines whether the weight of evidence supports a finding that there is or is not a positive association between herbicide exposure and the subsequent health outcome. The Secretary does this by taking into account the statistical significance, capability of replication, and whether that study will withstand peer review. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are more credible than others. The Secretary gives weight to more credible studies in evaluating the overall evidence concerning specific health outcomes.

II. Prior NAS Reports

The Secretary's determination that there is not a positive association between herbicide exposure and the diseases addressed in this notice is based upon the NAS's 2008 review and

analysis of the relevant scientific evidence as summarized below, the additional analyses provided in this notice, and NAS's and VA's previous analyses of the scientific and medical literature set forth in earlier **Federal Register** notices at: 59 FR 341 (Jan. 4, 1994), 61 FR 41442 (Aug. 8, 1996), 64 FR 59232 (Nov. 2, 1999), 66 FR 2376 (Jan. 11, 2001), 67 FR 42600 (Jun. 4, 2002), 68 FR 27630 (May 30, 2003), 72 FR 32395 (June 12, 2007), and 75 FR 32540 (Jun. 8, 2010).

III. Update 2008

NAS issued Update 2008 on July 24, 2009. The report is available at *http://www.nap.edu/catalog.php?record_id=12662*. For Update 2008, NAS conducted a search of literature published through September 30, 2008, and identified more than 7,000 potentially relevant citations. About 850 were retained for closer consideration, and about 300 contributed information for the NAS's detailed analysis.

a. Sufficient Evidence of Association

Consistent with its prior reports, NAS in Update 2008 found that there was "sufficient evidence of an association" between herbicide exposure and five categories of diseases in veterans. VA has previously established or proposed presumptions of service connection for each of these diseases. *See* 38 CFR 3.309(e); 75 FR 14391 (Mar. 25, 2010) (proposing to add HCL and other chronic b-cell leukemias to the category of chronic lymphocytic leukemia (CLL)).

b. Limited/Suggestive Evidence of Association

NAS, in 2008, categorized certain health outcomes to have "limited or suggestive evidence of an association." This category is defined to mean that evidence suggests an association between exposure to herbicides and the outcome, but a firm conclusion is limited because chance, bias, and confounding could not be ruled out with confidence. Health outcomes placed in the "limited or suggestive evidence of an association" category are laryngeal cancer; cancer of the lung, bronchus, or trachea; prostate cancer; multiple myeloma; early-onset transient peripheral neuropathy; porphyria cutanea tarda; type 2 diabetes (mellitus); spina bifida in offspring of exposed persons; AL amyloidosis; hypertension; Parkinson's disease; and ischemic heart disease. VA has previously established presumptions of service connection for laryngeal cancer; cancer of the lung, bronchus, or trachea; prostate cancer; multiple myeloma; early-onset transient peripheral neuropathy, porphyria cutanea tarda; type 2 diabetes (mellitus); and AL amyloidosis. *See* 38 CFR 3.309(e). In instances of spina bifida in offspring of exposed persons, VA pays a monetary allowance under 38 CFR 3.814. VA recently proposed presumptions of service connection for Parkinson's disease and ischemic heart disease. *See* 75 FR 14391 (Mar. 25, 2010). Hypertension is discussed below.

NAS identified and reviewed information from comprehensive databases covering biologic, medical, toxicologic, chemical, historical and regulatory information to determine whether a statistical association with herbicide exposure exists, whether there is an increased risk of disease among those exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and whether there exists a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and hypertension. In Update 2006, the NAS changed the category for hypertension from "insufficient evidence" to "limited or suggestive evidence," but clearly could not distinguish the possibility of a small increased risk for hypertension due to herbicide exposure from more prevalent scientifically established risk factors in evaluating the risk to individual Veterans. NAS noted the limitations of the studies regarding hypertension. In the **Federal Register** of June 8, 2010, VA explained why the studies reviewed in Update 2006 did not, in VA's view, warrant a presumption of service connection for hypertension in veterans exposed to herbicides in service. 75 FR 32540 (Jun. 8, 2010).

In Update 2008, NAS identified six new studies concerning hypertension that the committee found to be generally consistent with its conclusion in Update 2006 that there is "limited/suggestive evidence" of an association between herbicide exposure and hypertension. However NAS also found significant limitations in each of the studies. It noted that a mortality study of a population accidentally exposed to dioxin in Seveso, Italy, had little ability to control for potentially important confounders. Three of the new studies analyzed data from the National Health and Nutrition Examination Survey (NHANES), which the committee characterized as broadly consistent with the Update 2006 conclusion, but also as limited by selection bias that may distort the evidence of association and by the inconsistency of the findings among various exposure categories. NAS noted that a study of 47 exposed people in Florida involved a small survey of a problematic sample, making the data difficult to interpret. Finally, the committee noted that a study of an exposed population in Taiwan found no association between hypertension and being in the exposed population. When the analysis was restricted to persons having chloracne (a skin condition associated with herbicide exposure), the study found an increased incidence of hypertension in women, but not in men, making the findings difficult to interpret.

Relatively few of the positive findings were statistically significant and the findings overall are limited by the inconsistency of the results, the lack of controls, and other methodological concerns. The inconsistent findings within and across the studies limit the ability to draw any conclusions regarding dose-response relationship. Viewing the new studies published since 2006 in relation to the previously reviewed evidence, VA has determined that the evidence overall does not establish a positive association between herbicide exposure and hypertension. Therefore, a presumption of service connection is not warranted.

c. Inadequate or Insufficient Evidence To Determine Whether an Association Exists

NAS, in Update 2008, categorized certain other health outcomes as having inadequate or insufficient evidence to determine whether an association with herbicide exposure exists. This category is defined to mean that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure. The health outcomes that met this category are: cancers of the oral cavity (including lips and tongue), pharynx (including tonsils), nasal cavity (including ears and sinuses); cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs; esophageal cancer; stomach cancer; colorectal cancer (including small intestine and anus); hepatobiliary cancers (liver, gallbladder and bile ducts); pancreatic cancer; bone and joint cancer; melanoma; non-melanoma skin cancer (basal cell and squamous cell); breast cancer; cancers of reproductive organs (cervix, uterus, ovary, testes, and penis; excluding prostate); urinary bladder cancer; renal cancer (kidney and renal pelvis); cancers of brain and nervous system (including eye); endocrine cancer (thyroid, thymus, and other endocrine organs); leukemia (other than all chronic B-cell leukemias including chronic

lymphocytic leukemia (CLL) and HCL); cancers at other and unspecified sites; neurobehavioral disorders (cognitive and neuropsychiatric); movement disorders (including amyotrophic lateral sclerosis (ALS) but excluding Parkinson's disease); chronic peripheral nervous system disorders; respiratory disorders (wheeze or asthma, chronic obstructive pulmonary disorder, and farmer's lung); gastrointestinal, metabolic, and digestive disorders (changes in liver emzymes, lipid abnormalities and ulcers); immune system disorders (immune suppression, allergy and autoimmunity); circulatory disorders (other than hypertension or ischemic heart disease); endometriosis; effects on thyroid homeostasis and certain reproductive effect *i.e.,* infertility, spontaneous abortion, neonatal or infant death and stillbirth in offspring of exposed people, low birth weight in offspring of exposed people, birth defects (other than spina bifida) in offspring of exposed people, and childhood cancer (including acute myelogenous leukemia) in offspring of exposed people.

After considering the NAS report, the Secretary has determined that presumptions of service connection are not warranted for any of the diseases listed above. As noted above, VA has previously explained, in a series of **Federal Register** notices, its analysis of prior NAS reports concerning these diseases. The additional evidence and analysis addressed in Update 2008 with respect to these conditions is summarized below.

In Update 2008, NAS identified no additional studies relevant to the possible association between herbicide exposure and cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs; esophageal cancer; bone and joint cancer; cancers of the male reproductive organs (other than prostate cancer), endocrine cancer, movement disorders (including ALS but excluding Parkinson's disease); endometriosis; effects on thyroid homeostasis; and certain reproductive effects. Accordingly, the NAS's conclusions regarding those conditions were unchanged from Update 2006.

In Update 2008, NAS found that the relevant new studies it identified did not include any statistically significant findings of association between herbicide exposure and the following diseases: oral, nasal, and pharyngeal cancers; colorectal cancer; hepatobiliary cancer, melanoma, non-melanoma skin cancer; cancers of the female reproductive organs; urinary bladder cancer; renal cancer; chronic peripheral nervous system disorders; gastrointestinal, metabolic, and digestive disorders (including changes in liver enzymes, lipid abnormalities, and ulcers); and endometriosis. Accordingly, NAS found that the additional evidence generally did not support an association between herbicide exposure and those health outcomes.

With respect to several other health outcomes, NAS in Update 2008 found that, although the new studies included some statistically significant positive findings, those findings did not warrant a change in the conclusion that the evidence overall is inadequate or insufficient to determine whether the health outcome is associated with herbicide exposure, as explained below.

NAS discussed two new studies regarding stomach cancer. One of the studies found no increased mortality from stomach cancer in the exposed population. The other study found a statistically significant increased risk of stomach cancer among farm workers who used pesticides. NAS noted that this study was consistent with findings of a previously-reviewed occupational study finding evidence of an association between exposure to phenoxy herbicides (but not other types of herbicides) and stomach cancer. However, NAS noted that several other significant studies it had previously reviewed—including studies of Vietnam veteran cohorts, studies of the International Agency for Research on Cancer (IARC) cohort, and the U.S. Agricultural Health Study—had provided no evidence suggestive of an association between herbicide exposure and stomach cancers. Accordingly, NAS in Update 2008 concluded that the overall evidence does not support an association between exposure to the herbicides of interest and stomach cancer.

NAS discussed two new studies regarding pancreatic cancer. One of the studies found no increased mortality from pancreatic cancer in the exposed population. The other study found a statistically significant increase in pancreatic cancer among deployed U.S. female Vietnam veterans in comparison to their nondeployed counterparts. NAS noted that a previously reviewed study also found evidence of an increased risk of pancreatic cancer in deployed Australian Vietnam veterans. NAS noted that no increase in risk has been detected to date in U.S. male Vietnam veterans or in agricultural cohorts or IARC follow-up studies. It further noted that the Vietnam veteran studies were limited due to lack of control for smoking and lack of supportive evidence from occupational or environmental studies. NAS found that the overall evidence remained insufficient or inadequate to determine whether an association exists.

NAS discussed four new studies concerning breast cancer. Three of the studies, including a Vietnam veteran study, found no increased risk of breast cancer in exposed populations. One study found an increased risk of breast cancer associated with self-reported use of household pesticides. NAS concluded that the new evidence tended to weigh against an association and that the one positive study was limited by potential recall bias and the lack of information regarding specific exposures.

NAS discussed four new studies regarding cancers of the brain and nervous system (including the eye). It found that the new studies were consistent in finding no association between herbicide exposure and the development of gliomas (the most common type of brain cancer). NAS noted that one of the new studies provided evidence of a possible relationship between herbicide exposure and meningiomas (a type of nervous system cancer) in women, but that the lack of identification of specific chemicals of interest makes interpretation of that result uncertain. NAS concluded that the overall evidence remained inadequate or insufficient to determine whether and association exists.

NAS discussed three new studies addressing whether all forms of leukemia are associated with herbicide exposure. One of the studies found no evidence of an association between herbicide exposure and leukemias, while the other two found evidence of such an association. However, NAS found that one of the positive studies was limited by concern over possible misclassification of causes of death for the few people whose deaths were attributed to forms of leukemia other than those already considered to be associated with herbicide exposure (*i.e.,* b-cell leukemias). Viewing the new evidence in relation to the previously reviewed evidence, NAS found that the overall evidence was inadequate or insufficient to determine whether an association exists. NAS's finding that the evidence does not establish an association between herbicide exposure and all forms of leukemia does not affect its independent finding that there is sufficient evidence of a causal association between herbicide exposure and specific forms of leukemia (*i.e.,* CLL and other chronic b-cell leukemias).

NAS discussed three new studies regarding neurobehavioral effects. Two of the studies found an increased reporting of neurobehavioral symptoms with self-reported pesticide exposure, but no associations specific to herbicide exposure. The third study found an increased incidence of abnormalities on neurobehavioral testing among persons chronically exposed to herbicides, but NAS found this study limited by the small sample size, the lack of information on methodology, and the possibility that many other environmental and age-related factors may have affected the results. Further, the data do not clearly relate the increased symptoms or abnormal test results to specific neurobehavioral diseases or diagnoses. NAS concluded that the overall evidence remained inadequate or insufficient to detect an association.

NAS noted that several previously reviewed studies failed to support the hypothesis that herbicide exposure is associated with respiratory mortality from non-cancer diseases. In Update 2008, NAS identified one new study showing increased respiratory mortality, but determined that no conclusions could be drawn from the study due to lack of specificity regarding the health outcomes and due to other methodological concerns. In Update 2008, NAS also discussed new and previously reviewed studies relating to three specific categories of respiratory effects: chronic obstructive pulmonary disease (COPD), "wheeze" and asthma, and farmer's lung. NAS concluded that most prevalence studies found no association between herbicide exposure and COPD, and the two that did find evidence of such association were limited by methodological concerns. NAS found that the relevant studies did not detect an association between herbicide exposure and "wheeze" or asthma after adjusting for known confounders, and that the sole relevant study on farmer's lung was inconclusive.

NAS discussed two new studies regarding immune system disorders. One study found no evidence of immune system disorders in persons highly exposed to dioxin. The other study found an increase in self-reported arthritis (thought to be an autoimmune disorder) among exposed women, but not men. NAS concluded that the positive finding was unsupported by experimental evidence and that the overall evidence remained inadequate or insufficient to determine whether an association exists.

NAS identified one study finding evidence of an increased risk of mortality from rheumatic heart disease in an exposed population, but concluded that the basis for the observed association was unclear and that the data were limited by the lack of control for significant confounders and other methodological concerns. NAS found that the overall evidence was inadequate or insufficient to determine whether herbicide exposure is associated with any circulatory disorders other than ischemic heart disease or hypertension.

NAS discussed four new studies regarding thyroid homeostasis. It found that the new studies were generally consistent with previously reviewed studies suggesting that herbicides may exert some effect on thyroid function. However, NAS concluded that the significance of the observed effects is unclear because the body's adaptive capacity should be sufficient to accommodate them. NAS concluded that there was inadequate or insufficient evidence to determine whether herbicide exposure is associated with clinical or overt adverse effects on thyroid homeostasis.

NAS noted that previous Veterans and Agent Orange (VAO) committee findings did not find any significant association between the relevant exposure and several reproductive outcomes. In Update 2008, NAS determined that there is inadequate or insufficient evidence of an association between herbicide exposure and endometriosis; semen quality; infertility; spontaneous abortion; late fetal, neonatal, or infant death; low birth weight or preterm delivery; birth defects other than spina bifida; and childhood cancers (including acute myelogenous leukemia) in offspring of exposed people.

Among three new studies on endometriosis, two found no significant evidence of association and the third found a decreased risk among the most highly exposed persons. NAS found that several new studies regarding the effects of herbicide exposure on semen quality and female infertility provided little evidence of any adverse impact. NAS found that two new studies regarding spontaneous abortion provided conflicting results and that the overall evidence indicates that paternal exposure is not associated with spontaneous abortion and that there is inadequate or insufficient evidence to determine whether maternal exposure is associated with such outcomes. NAS concluded that one new study regarding the effect of dioxin-like substances on stillbirth, neonatal, death, or spontaneous abortion, did not provide primary evidence for an association between dioxin and such outcomes.

NAS discussed four new studies concerning low birth weight or preterm delivery and found that the evidence overall suggests no association between herbicide exposure and those outcomes. NAS concluded that two new studies provided no evidence of an association between herbicide exposure and birth defects other than spina bifida. NAS concluded that the four new studies of childhood cancer in the offspring of exposed individuals contained conflicting findings, but that the positive findings in two studies were limited by broad exposure classifications.

Conclusion:

After careful review of the findings of the NAS Report, Veterans and Agent Orange Update 2008, the Secretary has determined that the scientific evidence presented in the 2008 NAS report and other information available to the Secretary indicates that no new presumption of service connection is warranted at this time for any disease other than HCL and other chronic b-cell leukemias, Parkinson's disease, and ischemic heart disease.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 20, 2010, for publication.

Dated: December 20, 2010.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

[FR Doc. 2010–32332 Filed 12–23–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2011 Calendar Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice informs the public of updated data for calculating the "reasonable charges" collected or recovered by VA for medical care or services provided or furnished by VA to a veteran for: (1) A non service-connected disability for which the veteran is entitled to care or the

payment of expenses for care under a health plan contract; (2) a non service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non service-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance. The charge tables and supplemental tables that are applicable to this notice can be viewed on the Veterans Health Administration Chief Business Office's Intranet and Internet Web sites. These changes are effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 17.101 of title 38, United States Code of Federal Regulations (CFR), sets forth the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for: (1) A non service-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; (2) a non service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non service-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance.

The regulation also provides that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data." The charge tables and supplemental tables that are applicable to this **Federal Register** notice can be viewed on the Veterans Health Administration Chief Business Office's Intranet and Internet Web sites. Certain charges are hereby updated as described below. These changes are effective January 1, 2011.

We note that in cases where charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

The regulation includes methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. Each type of charge is addressed below.

Acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 27, 2010 (75 FR 59329). VA's current inpatient charge structure utilizes the methodology set forth in 38 CFR 17.101 and does not itemize inpatient bills.

Skilled nursing facility/sub-acute inpatient facility charges also remain the same as set forth in a notice published in the **Federal Register** on September 27, 2010 (75 FR 59329).

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2011 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These updated charges are effective January 1, 2011.

In this update, we are retaining the table designations used for HCPCS Level II and CPT Codes in the notice posted on the Internet site of the Veterans Health Administration Chief Business Office currently at *http://www.va.gov/cbo* , under "Charge Data." The effective date of this change was January 1, 2010, and the notice can be found in the **Federal Register.** 74 FR 68660 (Dec. 28, 2009). Accordingly, the tables identified as being updated by this notice correspond to the applicable tables posted on the Internet with the notice, beginning with Table C.

The list of VA medical facility locations has also been updated. As a reminder, in Supplementary Table 3 we set forth the list of VA medical facility locations, which includes the first three-digits of their zip codes and provider based/non-provider based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data." The updated data tables and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 20, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–32426 Filed 12–23–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
December 27, 2010

Part II

Environmental Protection Agency

40 CFR Part 98

Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2010–0929 FRL–9242–7]

Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is promulgating this interim final rule to defer until August 31, 2011 the reporting deadline for year 2010 data elements that are inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule. In response to EPA's July 7, 2010 proposed confidentiality determinations for data required under the reporting rule, EPA received several comments raising concerns that warrant further consideration before EPA issues final confidentiality determinations for data elements that are inputs to emission equations for direct emitters. To allow time for EPA to consider these comments and other information concerning these data elements before they are reported to EPA, EPA is deferring direct emitter reporting of the data elements in the inputs to emission equations data category until August 31, 2011, while concurrently publishing both a proposed notice and comment rulemaking to defer the reporting date for these inputs and a call for information to assist EPA in its deliberations on this matter.

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

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9263; *fax number:* (202) 343–2342; *e-mail address: GHGReportingCBI@epa.gov.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic pre-publication copy of this interim final rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

APA Administrative Procedure Act
CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
U.S. United States
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Summary of the Interim Final Rule
A. Facilities Affected
B. Amendment
III. Rationale for the Interim Final Rule
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A. Executive Order 12866: Regulatory Planning and Review
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E. Executive Order 13132: Federalism
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G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions 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
K. Congressional Review Act

Does this action apply to me? The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). This action amends existing regulations. Entities affected by this action are owners or operators of facilities that are direct emitters of greenhouse gases (GHGs) and are required to report these emissions under 40 CFR part 98, which include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
	325193	Ethyl alcohol manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Types of facilities other than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in subparts C though HH, excluding subparts I, L, T, W, DD, and FF. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

Judicial Review. Under CAA section 307(b)(1), judicial review of this interim final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2011. Filing a petition for reconsideration by the Administrator of this interim final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petitions for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

I. Background

On October 30, 2009, EPA published the Mandatory GHG Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the GHG Reporting Rule (hereinafter referred to as "Part 98") and its subsequent amendments, EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported consists of GHG emissions information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not

emissions data, and are CBI" (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the "July 7, 2010 CBI proposal"). The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts included in the 2009 final Part 98 rule (*see* 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (*see* 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (*see* 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (*see* 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the "August 11, 2010 revisions proposal"). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions proposal (75 FR 43889, July 27, 2010; hereinafter referred to as the "July 27, 2010 supplemental CBI proposal").

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today's action. Consistent with EPA's long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), cannot be held as confidential once they are reported to EPA.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. Though we are still in the process of considering these comments, we plan to complete our consideration of these comments and issue final confidentiality determinations for the Part 98 data elements that are not inputs to emission equations, approximately 75 percent of the data elements, in a separate action. However, as explained in more detail in Section III of this preamble, EPA received comments that raise concerns regarding the possible public availability of the data in the inputs to emission equations category. EPA has determined that these concerns warrant in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection and review of additional information, that cannot be completed before the March 31, 2011 reporting deadline.

In the concurrent proposed rule, EPA is proposing to defer the reporting of inputs to equations until March 31, 2014,[1] affording EPA additional time to complete the evaluation described above and take appropriate final actions regarding inputs to equations before these data elements are reported to EPA and potentially subject to release. EPA is also concurrently publishing a call for information, entitled "Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule," to collect additional information that will assist EPA with our deliberations. EPA is issuing this interim final rule to afford EPA the time needed to implement the notice and comment requirements for the longer deferral.

II. Summary of the Interim Final Rule

A. Facilities Affected

This action affects only facilities that are subject to the source category-specific reporting requirements in 40 CFR part 98, subparts C through HH, excluding subparts I, L, T, W, DD, and FF. This includes only direct-emitting facilities covered by the Part 98 subparts published on October 30, 2009, which require these facilities to begin monitoring emissions on January 1, 2010 and to submit their first annual GHG report (covering calendar year 2010 emissions) by March 31, 2011. The list of affected source categories is provided in Table 2 of this preamble.[2]

TABLE 2—SOURCE CATEGORIES COVERED BY THIS ACTION

Source category	40 CFR Part 98 Subpart	**Federal Register** Notice
General Stationary Fuel Combustion Sources	C	74 FR 56260, Revised 11–24–2010.
Electricity Generation	D	74 FR 56260, Revised 11–24–2010.
Adipic Acid Production	E	74 FR 56260, 75 FR 66434.
Aluminum Production	F	74 FR 56260, Revised 11–24–2010.
Ammonia Manufacturing	G	74 FR 56260, Revised 11–24–2010.
Cement Production	H	74 FR 56260, 75 FR 66434.
Ferroalloy Production	K	74 FR 56260, 75 FR 66434.
Glass Production	N	74 FR 56260, 75 FR 66434.
HCFC–22 Production and HFC–23 Destruction	O	74 FR 56260, 75 FR 66434.
Hydrogen Production	P	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Iron and Steel Production	Q	74 FR 56260, 75 FR 66434.
Lead Production	R	74 FR 56260.
Lime Manufacturing	S	74 FR 56260, 75 FR 66434.
Miscellaneous Uses of Carbonate	U	74 FR 56260.
Nitric Acid Production	V	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Petrochemical Production	X	74 FR 56260, Revised 11–24–2010.
Petroleum Refineries	Y	74 FR 56260, Revised 11–24–2010.

[1] The record-keeping requirements of Part 98 remain in place.

[2] Certain source categories were revised in an action signed on November 24, 2010, which is available on our Web site, *http://www.epa.gov/climatechange/emissions/technical-corrections.html#revisions.*

TABLE 2—SOURCE CATEGORIES COVERED BY THIS ACTION—Continued

Source category	40 CFR Part 98 Subpart	Federal Register Notice
Phosphoric Acid Production	Z	74 FR 56260, 75 FR 66434.
Pulp and Paper Manufacturing	AA	74 FR 56260, Revised 11–24–2010.
Silicon Carbide Production	BB	74 FR 56260.
Soda Ash Manufacturing	CC	74 FR 56260, 75 FR 66434.
Titanium Dioxide Production	EE	74 FR 56260, 75 FR 66434.
Zinc Production	GG	74 FR 56260, 75 FR 66434.
Municipal Solid Waste Landfills	HH	74 FR 56260, 75 FR 66434.

B. Amendment

EPA is adding a table (Table A–6) to 40 CFR part 98, subpart A, specifying the individual data elements that are affected by this action. The table, which includes Part 98 data elements that EPA has assigned to the inputs to equations data category with an initial reporting year of 2010 and original initial reporting date of March 31, 2011, is organized by subpart and shows the regulatory citations for each of the data elements.[3] In addition, under the annual reporting requirement at 40 CFR 98.3(c), EPA is adding 40 CFR 98.3(c)(4)(vii), stating that reporting of the data elements listed in Table A–6 for calendar year 2010 is not required until August 31, 2011.

This interim final rule does not change any other requirements of Part 98, including the requirement that inputs to equations be retained as records in a form that is suitable for expeditious inspection and review (required for all Part 98 records by 40 CFR 98.3(g)).

III. Rationale for the Interim Final Rule

In the July 7, 2010, CBI proposal, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i), consistent with our long-standing interpretation, and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA. In response, EPA received comments that release of such information could cause serious business harms, and EPA considers some of these comments to warrant more extensive evaluation of potential impacts from the public availability of inputs to equations. To avoid the risk of having to make this data publicly available before EPA can fully consider the potential impact from such release, we are proposing the concurrent longer-term deferral to give EPA time to conduct this evaluation and take appropriate actions regarding inputs to equations (*see* Section III of the preamble to that proposed rule, "Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule," for further rationale). This interim final rule defers reporting of these inputs to the agency for a brief period while EPA promulgates the longer-term deferral through notice and comment.

This interim final rule defers reporting of inputs to equations until August 31, 2011, because EPA needs this time to complete the rulemaking for the longer-term deferral. To assist in this rulemaking, EPA is concurrently issuing a call for information and providing a 60-day comment period. EPA expects to receive a large number of comments, many of which may be technically complex. EPA must conduct an overview of the information and comment received before finalizing the proposed deferral to ensure that deferral of the inputs reporting deadline until March 31, 2014 is appropriate, and EPA must finalize any longer-term deferral before the interim final deferral date.

IV. Need for an Interim Final Rule

EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5." Consistent with this language, EPA is using the good cause exemption under the Administrative Procedure Act (APA) to take the actions set forth in this interim final rule without prior notice and comment. *See* 5 U.S.C. 553(b)(3)(B). Section 553(b) of the APA generally requires that any rule to which it applies be issued only after the public has received notice of, and had an opportunity to comment on, the proposed rule. However, APA section 553(b)(3)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice and comment would be impracticable, unnecessary, or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice and comment requirements of APA section 553(b).

EPA considers the present circumstances to provide good cause to take the actions set forth in this interim final rule without prior notice and comment because providing prior notice and comment would be impracticable, unnecessary, and contrary to the public interest. Notice and comment on this short deferral are impracticable, as EPA may not be able to complete a notice and comment rulemaking for a deferral before the March 31, 2011 reporting deadline, thus defeating the purpose of undertaking such a rulemaking. Further, even if EPA could complete a notice and comment deferral before March 31, 2011, EPA would not then be able to complete the electronic data reporting tool that we are developing for reporting of all data elements under Part 98 with sufficient lead time before the March 31, 2011 reporting deadline. To enable the development and release of this tool for timely reporting, EPA must know well in advance of the March 31, 2011 reporting deadline which data elements will be reported on that date. Even if EPA were able to promulgate a deferral with notice and comment by March 31, 2011, EPA still would not have sufficient time after the rule's finalization to make necessary adjustments and complete the reporting tool before it must be made available to reporters. This includes time for reporters to learn to use this new reporting system.

Further, given the short period of time that this interim final rule will be in effect and EPA's promulgation of a concurrent notice and comment rulemaking to defer the reporting deadline for inputs to equations for a longer period of time, EPA considers

[3] The list of inputs to equations is slightly different than what was proposed in the July 7, 2010 CBI proposal. Reporting elements included in this category are values used by reporters to calculate equation outputs.

soliciting public comment on this interim final rule to be unnecessary. This interim final rule simply provides the Agency with brief additional time to complete the concurrent rulemaking necessary to defer reporting of inputs to a later date that will give EPA time to fully address concerns about reporting of inputs to equations. The public will have an opportunity to comment on the concurrent proposed rule.

EPA also considers soliciting public comment on this interim final rule, which would prevent the rule from being finalized in time to defer reporting by March 31, 2011, to be contrary to the public interest. EPA is deferring reporting of certain data elements to avoid possibly causing unnecessary and unintentional, but irreparable, harm to reporters that they allege could occur if such information were reported to EPA and not treated as confidential. Because taking comment on this short-term deferral would defeat the purpose of this interim final rule, EPA finds good cause to defer for a short period of time the deadline for reporting inputs to equations under Part 98 without notice and comment.

EPA is also using the APA's good cause exemption to make this interim final rule effective on December 27, 2010. *See* 5 U.S.C. 553(d)(3). Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register.** EPA is issuing this interim final rule under CAA section 307(d)(1), which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on December 27, 2010.

Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As explained below, EPA finds that there is good cause for this rule to become effective on December 27, 2010, even though this results in an effective date fewer than 30 days from date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in APA section 553(d) is to give affected parties a reasonable time period to adjust their behavior and prepare before the final rule takes effect. This interim final rule defers a reporting date, requiring little preparation or behavior adjustment. A shorter effective date in such circumstances is consistent with the purposes of APA section 553(d), which provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Further, APA section 553(d)(3) provides that if the issuing agency has made a finding of good cause and published its reasoning with the rule, the rule may take effect sooner than 30 days. EPA has determined that good cause exists to defer the reporting date for inputs to emission equations until August 31, 2011 in this interim final rule without prior notice and comment, because prior notice and comment would be impracticable, unnecessary, and contrary to the public interest for the reasons stated above. Accordingly, we find that good cause exists to make this rule effective on December 27, 2010, consistent with the purposes of APA section 553(d)(3).

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. This interim final rule defers the reporting deadline for certain 2010 data elements, so it does not increase the reporting burden. However, OMB has previously approved the information collection requirements contained in the regulations promulgated on October 30, 2009, under 40 CFR part 98 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. EPA has also submitted the Information Collection Request requirements for four additional Part 98 subparts promulgated on July 12, 2010 to OMB for approval (*see* 75 FR 39756). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the effects of this rule 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 interim final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirement on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install continuous emission monitoring systems (CEMS) if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the industries and others.

We continue to be interested in the potential effects of this interim final rule on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable

officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The amendment to 40 CFR Part 98 does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The amendment only postpones the reporting date for certain data elements under Part 98, so it does not increase the costs for facilities to comply with Part 98. Thus, the action is not subject to the requirements of sections 202 or 205 of UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address effects of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, *see* Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

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. However, for a more detailed discussion about how Part 98 relates to existing State programs, *please see* Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This amendment applies to facilities that directly emit greenhouses gases. It does not apply to government entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action. For a summary of EPA's consultation with State and local organizations and representatives in developing Part 98, *see* Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

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). The rule does not result in any changes to the requirements of Part 98 other than postponing the reporting date for certain data elements until August 31, 2011. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with Tribal governments and representatives, *see* Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions 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 of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this interim final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The amendment addresses only reporting and recordkeeping procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 27, 2010. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: December 17, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for Part 98 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 98.3 is amended by revising paragraph (c)(4)(iv) and adding paragraph (c)(4)(vii) to read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?

* * * * *

(c) * * *

(4) * * *

(iv) Except as provided in paragraph (c)(4)(vii) of this section, emissions and other data for individual units, processes, activities, and operations as specified in the "Data reporting requirements" section of each applicable subpart of this part.

* * * * *

(vii) The owner or operator of a facility is not required to report the data elements specified in Table A–6 of this subpart for calendar year 2010 until August 31, 2011.

* * * * *

■ 3. Add Table A–6 to subpart A to read as follows:

TABLE A–6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
A	98.3(d)(3)(v)	All.
C	98.36(b)(9)(iii)	Only estimate of the heat input.
C	98.36(c)(2)(ix)	Only estimate of the heat input from each type of fuel listed in Table C–2.
C	98.36(d)(1)(iv)	All.
C	98.36(d)(2)(ii)(G)	All.
C	98.36(d)(2)(iii)(G)	All.
C	98.36(e)(2)(i)	All.
C	98.36(e)(2)(ii)(A)	All.
C	98.36(e)(2)(ii)(C)	Only HHV value for each calendar month in which HHV determination is required.
C	98.36(e)(2)(ii)(D)	All.
C	98.36(e)(2)(iv)(A)	All.
C	98.36(e)(2)(iv)(C)	All.
C	98.36(e)(2)(iv)(F)	All.
C	98.36(e)(2)(iv)(G)	All.
C	98.36(e)(2)(vi)(C)	Only stack gas flow rate and moisture content.
C	98.36(e)(2)(viii)(A)	All.
C	98.36(e)(2)(viii)(B)	All.
C	98.36(e)(2)(viii)(C)	All.
C	98.36(e)(2)(ix)(D)	All.
C	98.36(e)(2)(ix)(E)	All.
C	98.36(e)(2)(ix)(F)	All.
C	98.36(e)(2)(x)(A)	All.
C	98.36(e)(2)(xi)	All.
E	98.56(b)	All.
E	98.56(c)	All.
E	98.56(g)	All.
E	98.56(h)	All.
E	98.56(j)(1)	All.
E	98.56(j)(3)	All.
E	98.56(j)(4)	All.
E	98.56(j)(5)	All.
E	98.56(j)(6)	All.
E	98.56(l)	All.
F	98.66(a)	All.
F	98.66(c)(2)	All.
F	98.66(c)(3)	Only smelter-specific slope coefficients and overvoltage emission factors.
F	98.66(e)(1)	Only annual anode consumption (No CEMS).
F	98.66(f)(1)	Only annual paste consumption (No CEMS).
F	98.66(g)	All.
G	98.76(b)(2)	All.
G	98.76(b)(7)	All.
G	98.76(b)(8)	All.
G	98.76(b)(9)	All.
G	98.76(b)(10)	All.
G	98.76(b)(11)	All.
H	98.86(b)(2)	All.
H	98.86(b)(5)	All.
H	98.86(b)(6)	All.
H	98.86(b)(8)	All.
H	98.86(b)(10)	All.
H	98.86(b)(11)	All.
H	98.86(b)(12)	All.
H	98.86(b)(13)	All.

TABLE A–6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
H	98.86(b)(15)	Only monthly kiln-specific clinker factors (if used) for each kiln.
K	98.116(b)	Only annual production by product from each EAF (No CEMS).
K	98.116(e)(4)	All.
K	98.116(e)(5)	All.
N	98.146(b)(2)	Only annual quantity of carbonate based-raw material charged to each continuous glass melting furnace.
N	98.146(b)(4)	All.
N	98.146(b)(6)	All.
O	98.156(a)(2)	All.
O	98.156(a)(7)	All.
O	98.156(a)(8)	All.
O	98.156(a)(9)	All.
O	98.156(a)(10)	All.
O	98.156(b)(1)	All.
O	98.156(b)(2)	All.
O	98.156(d)(1)	All.
O	98.156(d)(2)	All.
O	98.156(d)(3)	All.
O	98.156(d)(4)	All.
O	98.156(d)(5)	All.
O	98.156(e)(1)	All.
P	98.166(b)(2)	All.
P	98.166(b)(5)	All.
P	98.166(b)(6)	All.
Q	98.176(b)	Only annual quantity taconite pellets, coke, iron, and raw steel (No CEMS).
Q	98.176(e)(1)	All.
Q	98.176(e)(3)	All.
Q	98.176(e)(4)	All.
Q	98.176(f)(1)	All.
Q	98.176(f)(2)	All.
Q	98.176(f)(3)	All.
Q	98.176(f)(4)	All.
Q	98.176(g)	All.
R	98.186(b)(6)	All.
R	98.186(b)(7)	All.
S	98.196(b)(2)	All.
S	98.196(b)(3)	All.
S	98.196(b)(5)	All.
S	98.196(b)(6)	All.
S	98.196(b)(8)	All.
S	98.196(b)(10)	All.
S	98.196(b)(11)	All.
S	98.196(b)(12)	All.
U	98.216(b)	All.
U	98.216(e)(1)	All.
U	98.216(e)(2)	All.
U	98.216(f)(1)	All.
U	98.216(f)(2)	All.
V	98.226(c)	All.
V	98.226(d)	All.
V	98.226(i)	All.
V	98.226(j)	All.
V	98.226(m)(1)	All.
V	98.226(m)(3)	All.
V	98.226(m)(4)	All.
V	98.226(m)(5)	All.
V	98.226(m)(6)	All.
V	98.226(p)	All.
X	98.246(a)(4)	Only monthly volume values, monthly mass values, monthly carbon content values, molecular weights for gaseous feedstocks, molecular weights for gaseous products, and indication of whether the alternative method in § 98.243(c)(4) was used.
X	98.246(b)(5)(iii)	All.
X	98.246(b)(5)(iv)	All.
Y	98.256(e)(6)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)(ii)	All.
Y	98.256(e)(9)	Only annual volume of flare gas combusted, annual average higher heating value of the flare gas, volume of gas flared, average molecular weight, carbon content of the flare, and molar volume conversion factor if using Eq. Y–3.
Y	98.256(e)(10)	Only fraction of carbon in the flare gas contributed by methane.

TABLE A–6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
Y	98.256(f)(7)	Only molar volume conversion factor.
Y	98.256(f)(10)	Only coke burn-off factor, annual throughput of unit, and average carbon content of coke.
Y	98.256(f)(11)	Only units of measure for the unit-specific CH_4 emission factor, activity data for calculating emissions, and unit-specific emission factor for CH_4.
Y	98.256(f)(12)	Only unit-specific emission factor for N_2O, units of measure for the unit-specific N_2O emission factor, and activity data for calculating emissions.
Y	98.256(f)(13)	Only average coke burn-off quantity per cycle or measurement period, and average carbon content of coke.
Y	98.256(h)(4)	All.
Y	98.256(h)(5)	Only value of the correction, annual volume of recycled tail gas, and annual average mole fraction of carbon in the tail gas (if used to calculate recycling correction factor).
Y	98.256(i)(5)	Only annual mass of green coke fed, carbon content of green coke fed, annual mass of marketable coke produced, carbon content of marketable coke produced, and annual mass of coke dust removed from the process.
Y	98.256(i)(7)	Only the unit-specific CH_4 emission factor, units of measure for unit-specific CH_4 emission factor, and activity data for calculating emissions.
Y	98.256(i)(8)	Only units of measure for the unit-specific factor, activity data used for calculating emissions, and site-specific emissions factor.
Y	98.256(j)(2)	All.
Y	98.256(j)(5)	Only CO_2 emission factor.
Y	98.256(j)(6)	Only CH_4 emission factor.
Y	98.256(j)(7)	Only carbon emission factor.
Y	98.256(j)(8)	Only CO_2 emission factor and carbon emission factor.
Y	98.256(j)(9)	Only CH_4 emission factor.
Y	98.256(k)(3)	Only dimensions of coke drum or vessel, typical gauge pressure of the coking drum, typical void fraction of coke drum or vessel, annual number of coke-cutting cycles of coke drum or vessel, and molar volume conversion factor for each coke drum or vessel.
Y	98.256(k)(4)	Only height and diameter of the coke drums, cumulative number of vessel openings for all delayed coking drums, typical venting pressure, void fraction, mole fraction of methane in coking gas.
Y	98.256(l)(5)	Only molar volume conversion factor.
Y	98.256(m)(3)	Only total quantity of crude oil plus the quantity of intermediate products received from off-site, CH_4 emission factor used, and molar volume conversion factor.
Y	98.256(n)(3)	All (if used in Equation Y–21 to calculate emissions from equipment leaks).
Y	98.256(o)(2)(ii)	All.
Y	98.256(o)(4)(ii)	All.
Y	98.256(o)(4)(iii)	All.
Y	98.256(o)(4)(iv)	All.
Y	98.256(o)(4)(v)	All.
Y	98.256(o)(4)(vi)	Only tank-specific methane composition data and gas generation rate data.
Y	98.256(p)(2)	Only quantity of materials loaded that have an equilibrium vapor-phase concentration of CH_4 of 0.5 volume percent or greater.
Z	98.266(f)(5)	All.
Z	98.266(f)(6)	All.
AA	98.276(b)	All.
AA	98.276(c)	Only annual mass of the spent liquor solids combusted.
AA	98.276(d)	All.
AA	98.276(e)	All.
AA	98.276(f)	All.
AA	98.276(g)	All.
AA	98.276(h)	All.
AA	98.276(i)	All.
BB	98.286(b)(1)	All.
BB	98.286(b)(4)	All.
BB	98.286(b)(6)	All.
CC	98.296(b)(5)	Only monthly consumption of trona or liquid alkaline feedstock (for facilities using Equation CC–1).
CC	98.296(b)(6)	Only monthly production of soda ash for each manufacturing line (for facilities using Equation CC–2).
CC	98.296(b)(7)	All.
CC	98.296(b)(10)(i)	All.
CC	98.296(b)(10)(ii)	All.
CC	98.296(b)(10)(iii)	All.
CC	98.296(b)(10)(iv)	All.
CC	98.296(b)(10)(v)	All.
CC	98.296(b)(10)(vi)	All.
CC	98.296(b)(10)(vii)	All.

TABLE A–6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
EE	98.316(b)(6)	All.
EE	98.316(b)(9)	All.
GG	98.336(b)(6)	All.
GG	98.336(b)(7)	All.
GG	98.336(b)(10)	All.
HH	98.346(a)	Only year in which landfill first accepted waste, last year the landfill accepted waste, capacity of the landfill, and waste disposal quantity for each year of landfilling.
HH	98.346(b)	Only quantity of waste determined using the methods in § 98.343(a)(3)(i), quantity of waste determined using the methods in § 98.343(a)(3)(ii), population served by the landfill for each year, and the value of landfill capacity (LFC) used in the calculation.
HH	98.346(c)	All.
HH	98.346(d)(1)	Only degradable organic carbon (DOC) value, methane correction factor (MCF) values, and fraction of DOC dissimilated (DOCF) values.
HH	98.346(d)(2)	All.
HH	98.346(e)	Only fraction of CH_4 in landfill gas.
HH	98.346(f)	Only surface area associated with each cover type.
HH	98.346(g)	All.
HH	98.346(i)(5)	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency for the primary destruction device, and destruction efficiency for the backup destruction device.
HH	98.346(i)(6)	All.
HH	98.346(i)(7)	Only surface area specified in Table HH–3, estimated gas collection system efficiency, and annual operating hours of the gas collection system.
HH	98.346(i)(9)	Only CH_4 generation value.

[FR Doc. 2010–32450 Filed 12–23–10; 8:45 am]

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Monday,
December 27, 2010

Part III

Environmental Protection Agency

40 CFR Part 98

Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2010–0929 FRL–9242–6]

Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to defer the reporting date of certain data elements that are inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule for three years. In response to EPA's July 7, 2010 proposed confidentiality determinations for data required under the reporting rule, EPA received several comments raising concerns that warrant further consideration before EPA issues final confidentiality determinations for data elements that are inputs to emission equations for direct emitters. To allow time for EPA to consider these comments and other information concerning these data elements before they are reported to EPA, when they may become publicly available, EPA is proposing to defer direct emitter reporting of inputs to emission equations for calendar years through 2012 until March 31, 2014. This proposal would not change any other requirements of the reporting rule.

DATES: *Comments.* Comments must be received on or before January 26, 2011 unless a public hearing is requested by January 6, 2011. If a hearing is requested on this proposed rule, written comments must be received by February 10, 2011.

Public Hearing. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by January 6, 2011. Upon such request, the hearing will be conducted on January 11, 2011, in the Washington, DC area. If a hearing is requested, EPA will provide further information about the hearing on its Web page: *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0929, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHGReportingCBI@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2010–0929 (and/or RIN number) in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. OAR–2010–0929, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0929. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingCBI@epa.gov.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic pre-publication copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION: *Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
NTTAA National Technology Transfer and Advancement Act of 1995
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
U.S. United States
WWW Worldwide Web

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Summary of the Proposed Amendment and Request for Comments
A. Facilities Affected
B. Proposed Amendment
C. Request for Comments
III. Rationale for the Proposed Amendment
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
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 Risks and Safety Risks
H. Executive Order 13211: Actions 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

Does this action apply to me? The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). This action would amend existing regulations. Entities affected by this proposed action are owners or operators of facilities that are direct emitters of greenhouse gases (GHGs) and are required to report under the Mandatory GHG Reporting Rule (40 CFR part 98), which include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
	325193	Ethyl alcohol manufacturing facilities.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
	.....	MEMS manufacturing facilities.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Fluorinated GHG Production	325120	Industrial gases manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	212391	Soda ash, natural, mining and/or beneficiation.
Sulfur Hexafluoride (SF_6) from Electrical Equipment.	221121	Electric bulk power transmission and control facilities.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Industrial Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
CO_2 Enhanced Recovery Projects	211	Oil and Gas Extraction Projects using CO_2 Enhanced Recovery.
Geologic Sequestration Sites	N/A	CO_2 geologic sequestration projects.

Table 1 of this preamble is not intended to be exhaustive but to provide a guide for readers regarding facilities likely to be affected by this action. Types of facilities other than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in subparts C though JJ [1] and RR, SS, and TT. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

I. Background

On October 30, 2009, EPA published the Mandatory GHG Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the GHG Reporting Rule (hereinafter referred to as "Part 98") and its subsequent amendments, EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported consists of GHG emissions information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI." (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the "July 7, 2010 CBI proposal"). The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts included in the 2009 final Part 98 rule (*see* 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (*see* 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (*see* 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (*see* 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the "August 11, 2010 revisions proposal"). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions notice (75 FR 43889, July 27, 2010; hereinafter referred to as the "July 27, 2010 supplemental CBI proposal").

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today's proposed action. Consistent with EPA's long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA.

[1] EPA will not be implementing 40 CFR part 98, subpart JJ due to a Congressional restriction prohibiting the expenditure of funds for this purpose. As a result, 40 CFR part 98, subpart JJ is not included in the scope of this notice.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. Though we are still in the process of considering these comments, we plan to complete our consideration of these comments and issue final confidentiality determinations for the Part 98 data elements that are not inputs to emission equations, which constitute approximately 75 percent of the data elements, in a separate final action. However, as explained in more detail in Section III of this preamble, EPA received comments that raise concerns regarding the public availability of data in the inputs to emission equations category. EPA has determined that these concerns warrant in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection and review of additional information, that cannot be completed before the March 31, 2011 reporting deadline. EPA is therefore proposing to defer the reporting of inputs to equations to afford EPA additional time to complete this evaluation and take appropriate final actions regarding inputs to equations before these data elements are reported to EPA and potentially become subject to release.

Concurrent with this proposal, EPA has promulgated an interim final rule that defers the initial March 31, 2011 reporting date for inputs to emission equations to August 31, 2011 to give EPA time to promulgate this deferral through notice and comment. (*See* Section III of the preamble to the interim final rule for further justification.) EPA is also concurrently publishing a call for information, entitled "Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule," to collect additional information that will assist EPA with the evaluation described above. Further information regarding that notice is found in Section II of this preamble.

II. Summary of the Proposed Amendment and Request for Comments

A. Facilities Affected

This proposed action would affect only facilities that directly emit GHGs and are subject to Part 98. It would not affect suppliers of fuels or industrial gases. Specifically, the amendment would apply to facilities that are subject to the source category-specific reporting requirements in 40 CFR part 98, subparts C through JJ [2] and subparts RR,[3] SS, and TT, including any subparts that EPA finalizes in future actions. The list of affected source categories is provided in Table 2 of this preamble.[4]

TABLE 2—SOURCE CATEGORIES COVERED BY THIS PROPOSAL

Source category	40 CFR Part 98 Subpart	**Federal Register** notice
General Stationary Fuel Combustion Sources	C	74 FR 56260, Revised 11–24–2010.
Electricity Generation	D	74 FR 56260, Revised 11–24–2010.
Adipic Acid Production	E	74 FR 56260, 75 FR 66434.
Aluminum Production	F	74 FR 56260, Revised 11–24–2010.
Ammonia Manufacturing	G	74 FR 56260, Revised 11–24–2010.
Cement Production	H	74 FR 56260, 75 FR 66434.
Electronics Manufacturing	I	75 FR 74774.
Ferroalloy Production	K	74 FR 56260, 75 FR 66434.
Fluorinated Gas Production	L	75 FR 74774.
Glass Production	N	74 FR 56260, 75 FR 66434.
HCFC–22 Production and HFC–23 Destruction	O	74 FR 56260, 75 FR 66434.
Hydrogen Production	P	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Iron and Steel Production	Q	74 FR 56260, 75 FR 66434.
Lead Production	R	74 FR 56260.
Lime Manufacturing	S	74 FR 56260, 75 FR 66434.
Magnesium Production	T	75 FR 39736.
Miscellaneous Uses of Carbonate	U	74 FR 56260.
Nitric Acid Production	V	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Petroleum and Natural Gas Systems	W	75 FR 74458.
Petrochemical Production	X	74 FR 56260, Revised 11–24–2010.
Petroleum Refineries	Y	74 FR 56260, Revised 11–24–2010.
Phosphoric Acid Production	Z	74 FR 56260, 75 FR 66434.
Pulp and Paper Manufacturing	AA	74 FR 56260, Revised 11–24–2010.
Silicon Carbide Production	BB	74 FR 56260.
Soda Ash Manufacturing	CC	74 FR 56260, 75 FR 66434.
Electrical Transmission and Distribution Equipment Use	DD	75 FR 74774.
Titanium Dioxide Production	EE	74 FR 56260, 75 FR 66434.
Underground Coal Mines	FF	75 FR 39736.
Zinc Production	GG	74 FR 56260, 75 FR 66434.
Municipal Solid Waste Landfills	HH	74 FR 56260, 75 FR 66434.
Industrial Wastewater Treatment	II	75 FR 39736.
Subpart RR—Geologic Sequestration of Carbon Dioxide	RR	74 FR 56260.
Subpart SS—Electrical Equipment Manufacture or Refurbishment	SS	75 FR 74774.
Subpart TT—Industrial Waste Landfills	TT	75 FR 39736.

[2] EPA will not be implementing 40 CFR part 98, subpart JJ due to a Congressional restriction prohibiting the expenditure of funds for this purpose. As a result, 40 CFR part 98, subpart JJ is not included in the scope of this notice.

[3] For subpart RR, the data elements covered by this action include only certain data elements related to GHG emissions.

[4] Certain source categories were revised in an action signed on November 24, 2010, which is available on our Web site, *http://www.epa.gov/climatechange/emissions/technical-corrections.html#revisions.*

B. Proposed Amendment

EPA proposes to add additional data elements to Table A–6 at 40 CFR part 98. Table A–6 was added by the concurrent interim final rule and specifies the data elements that have a deferred reporting date. The Table A–6 added by the interim final rule only includes data elements with an initial reporting year of 2010 and original initial reporting date of March 31, 2011. This action proposes to add the remaining data elements that are inputs to emission equations.[5] In addition, under the annual reporting requirement at 40 CFR 98.3(c), EPA proposes to amend 40 CFR 98.3(c)(4)(vii) (also added by the concurrent interim final rule) to defer the reporting date for data elements listed in Table A–6 until March 31, 2014.[6] This proposed action would not change any other requirements of Part 98, including the requirement that these data elements be retained as records in a form that is suitable for expeditious inspection and review (required for all part 98 records by 40 CFR 98.3(g)).

C. Request for Comments

This notice proposes to defer until March 31, 2014, the requirement to report inputs to emission equations for calendar years through 2012. Accordingly, comments on this action should be limited to the proposed deferral of the reporting requirements for these data elements. There will be separate notice and comment opportunities to address other issues, as described below.

III. Rationale for the Proposed Amendment

In the July 7, 2010, CBI proposal, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i), consistent with our long-standing interpretation, and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA. EPA received many comments in response and considers some of these comments to warrant further consideration before EPA issues final confidentiality determinations for data elements that are inputs to emission equations for direct emitters. This process requires additional time, necessitating this proposed deferral. Although we are not responding to public comments on the July 7, 2010 CBI proposal in this action, we are presenting some comments that illustrate the need to defer reporting of inputs to equations in order to allow EPA time to further consider the issues raised by these comments.

EPA received comments that raise serious concerns regarding the public availability of data in the inputs to emission equations category. Almost all commenters from industry wrote that some or all inputs to emission equations (which include product compositions, raw materials used, fuel types and quantities, production volumes, and other process-specific information) are considered trade secrets or otherwise sensitive business information, and that making those inputs publicly available would cause them serious competitive harm. Some commenters expressed concern that public disclosure of production volumes and process-specific information could give competitors insight into sensitive operational limits and process capabilities. The commenters explained that, combined with other publicly available information, this information could give competitors details concerning business positions or vulnerabilities that could be used to a reporter's disadvantage. Some commenters stated that disclosure of the type, composition, and relative proportions of raw materials used would reveal the specific formula used to manufacture their products. Others expressed concern that product composition data reveal information about their products' performance characteristics. Some stated that public availability of information about the types and quantities of fuels consumed would reveal sensitive details about individual production processes' energy usage and could be used to estimate relative production costs.

Several Part 98 reporters commented that, had they known that EPA would later propose that inputs to emission equations qualify as emission data that must be made available to the public under CAA section 114(c), they would have commented more critically and more extensively on Part 98 equations when they were proposed in 2009 and might have suggested or agreed to alternatives such as third-party audits or installation of continuous emission monitoring systems (CEMS). Several reporters wrote that they would have installed CEMS or otherwise changed their compliance approaches. Commenters further noted that, for some subparts, Part 98 allows monitoring emissions with CEMS as an alternative to calculation with emission equations but that, by the time EPA proposed CBI determinations in July 2010, reporters no longer could install CEMS for 2010. As a result, commenters stated, these reporters were locked into using the emission equations for 2010 reporting if that was the methodology they had chosen. They argued that possible public availability of potentially sensitive inputs for calculation of 2010 emissions should not be based on a reporter's decision not to install CEMS for 2010 when this decision was made prior to and without knowledge of the July 7, 2010 CBI proposal.

EPA has reviewed these comments and has concluded that some of the concerns warrant more extensive evaluation of potential impacts from the public availability of inputs to equations. EPA notes, however, that many of the potential problems commenters described are general in nature and likely to apply to some but not all inputs to emission equations or industrial sectors. For example, multiple industries consider raw material quantities and compositions to be trade secrets, but municipal landfill data are generally available in public records. Because many comments raised serious concerns without sufficient specificity for EPA to fully evaluate and address them, we are concurrently issuing a call for information that solicits additional information including:

- Identification of which specific data elements used as inputs to emission equations the commenter considers sensitive business information and specifically how disclosure would cause competitive harm.
- Identification of which data elements that are inputs to emission equations are already publicly available or discernable from other publicly available data.

We also are soliciting suggestions regarding possible changes to Part 98, including:

- Identification of additional calculation methods that would adequately calculate GHG emissions without using the specific inputs that the commenter considers to be sensitive.
- Identification of additional data verification methods that could be used if EPA does not collect the specific data elements that commenters consider to be sensitive.

The call for information includes further details on the specific types of information requested and instructions for submitting information and comments.

[5] The list of inputs to equations is slightly different than what was proposed in the July 7, 2010 CBI proposal. Reporting elements included in this category are values used by reporters to calculate equation outputs.

[6] This proposal also provides the public an opportunity to comment on the Table A–6 and paragraph 40 CFR 98.3(c)(4)(vii) added in the interim final rule.

Once EPA receives the additional requested information, we will be able to fully evaluate which, if any, inputs to equations could result in the harmful consequences described by the July 7, 2010 CBI proposal commenters if made available to the public. For any inputs, the release of which EPA determines could result in the business harms alleged by commenters, EPA would evaluate whether emissions can be calculated or verified using additional methodologies, consistent with the transparency and accuracy goals of Part 98, without EPA collecting these inputs. Should EPA identify any such additional methodologies, EPA may propose to amend Part 98 to allow these additional emission measurement or calculation approaches. If additional approaches to calculate or verify emissions are viable, EPA may determine that it is not necessary to collect certain highly sensitive inputs and propose to amend Part 98 accordingly. As previously stated in the July 7, 2010 CBI proposal preamble, however, EPA is committed to transparency as well as accuracy in the GHG Reporting Program. We consider transparency important because it promotes public confidence in the data and enables the public, industry, advocacy groups, and other stakeholders to better understand the sources of GHG emissions and the factors that affect the quantities of GHGs emitted. Therefore, any additional approach we adopt would be based on a well-balanced consideration of both the importance of protecting certain highly sensitive data and our commitment to the GHG Reporting Program's transparency and accuracy. Should EPA decide that it is necessary to amend Part 98 as a result of this evaluation, we would promulgate any such amendment through a notice and comment process.

As noted above, EPA needs time to collect information, conduct extensive evaluations, and take final actions regarding inputs to equations, which EPA cannot complete before the current reporting deadlines. To give EPA time to complete these important tasks before these data elements are reported and potentially subject to release, EPA is issuing this proposed rule to defer until March 31, 2014, the deadline for reporting of data elements that are inputs to emission equations. As noted above, EPA is concurrently issuing an interim final rule that defers the reporting deadline for these data elements until August 31, 2011 to allow us to undertake this notice and comment process before inputs to emission equations must be reported to EPA.

EPA is not revisiting our decision to require self-certification with EPA emissions verification. We plan to verify the data and to ensure that accurate data is available to the public, including for the years in which inputs are temporarily not collected. EPA outlined in the preamble to Part 98 (74 FR 56260) the reasons for selecting our verification approach, and these reasons remain relevant and compelling. In the final Part 98, we determined that EPA verification allows EPA to implement an efficient two-step process of (1) a centralized, automated electronic review and (2) direct follow-up with facilities, including conducting on-site audits when potential errors, discrepancies, or questions arise from the electronic review results.

During the deferral, EPA plans to follow this two-step process with some modifications. Neither the short-term deferral put in place by the concurrent interim final rule nor the longer-term deferral proposed in this action affects supplier source categories, so neither action will affect the verification process for supplier data. For the direct emitter source categories, EPA recognizes that, during the deferral period, we will receive fewer data upon which to conduct electronic verification. As a result, EPA temporarily will place additional emphasis on the second step of the process, direct follow-up with facilities. Increased emphasis on direct follow-up with facilities will allow EPA to compensate for the reduced amount of electronic verification that can be conducted during this temporary period.

Although we will not be collecting the equation inputs during the deferral period, we will nonetheless still be collecting several different types of data that will be used for verification. These data include the calculation methodologies used, specific test methods that were used to determine equation inputs, an indication of whether missing data procedures were used, and various operating characteristics such as plant and equipment capacities and production rates. These data will be used in the electronic verification process. EPA is confident that electronic verification coupled with more robust direct follow-up will achieve verification for this three year period.

IV. 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. This proposed amendment would allow facilities to keep certain data elements as records rather than report them in their annual GHG reports during the deferral period, so it would not increase the reporting burden. However, OMB has previously approved the information collection requirements contained in the regulations promulgated on October 30, 2009, under 40 CFR part 98, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. EPA has also submitted the Information Collection Request requirements for four additional Part 98 subparts promulgated on July 12, 2010 to OMB for approval (*see* 75 FR 39756). The OMB control numbers for EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule 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 proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a

substantial number of small entities. The proposed rule amendment will not impose any new requirement on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install CEMS if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the regulated industries.

We continue to be interested in the potential impacts of the proposed rule amendment on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed amendment to 40 CFR part 98 does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed amendment would allow certain data elements to be retained as records rather than reported, so it does not increase the costs for facilities to comply with Part 98. Thus, the proposed amendment is not subject to the requirements of sections 202 or 205 of UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, *see* Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

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. However, for a more detailed discussion about how Part 98 relates to existing State programs, *please see* Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This proposed amendment applies to facilities that directly emit greenhouses gases. It does not apply to government entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials. For a summary of EPA's consultation with State and local organizations and representatives in developing Part 98, *see* Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

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). The proposed rule amendment would not result in any changes to the requirements of Part 98 other than allowing facilities to keep certain data elements as records rather than report them in their annual GHG reports through 2012. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with Tribal governments and representatives, *see* section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions 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 of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rule amendment does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed amendment addresses only reporting and recordkeeping procedures.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: December 17, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for Part 98 continues to read as follows:

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

Subpart A—[Amended]

2. Section 98.3 is amended by revising paragraph (c)(4)(vii) to read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?

* * * * *

(c) * * *

(4) * * *

(vii) The owner or operator of a facility is not required to report the data elements specified in Table A–6 of this subpart for calendar years 2010 through 2012 until March 31, 2014.

* * * * *

3. Revise Table A–6 to subpart A to read as follows:

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
A	98.3(d)(3)(v)	All.
C	98.36(b)(9)(iii)	Only estimate of the heat input.
C	98.36(c)(2)(ix)	Only estimate of the heat input from each type of fuel listed in Table C–2.
C	98.36(d)(1)(iv)	All.
C	98.36(d)(2)(ii)(G)	All.
C	98.36(d)(2)(iii)(G)	All.
C	98.36(e)(2)(i)	All.
C	98.36(e)(2)(ii)(A)	All.
C	98.36(e)(2)(ii)(C)	Only HHV value for each calendar month in which HHV determination is required.
C	98.36(e)(2)(ii)(D)	All.
C	98.36(e)(2)(iv)(A)	All.
C	98.36(e)(2)(iv)(C)	All.
C	98.36(e)(2)(iv)(F)	All.
C	98.36(e)(2)(iv)(G)	All.
C	98.36(e)(2)(vi)(C)	Only stack gas flow rate and moisture content.
C	98.36(e)(2)(viii)(A)	All.
C	98.36(e)(2)(viii)(B)	All.
C	98.36(e)(2)(viii)(C)	All.
C	98.36(e)(2)(ix)(D)	All.
C	98.36(e)(2)(ix)(E)	All.
C	98.36(e)(2)(ix)(F)	All.
C	98.36(e)(2)(x)(A)	All.
C	98.36(e)(2)(xi)	All.
E	98.56(b)	All.
E	98.56(c)	All.
E	98.56(g)	All.
E	98.56(h)	All.
E	98.56(j)(1)	All.
E	98.56(j)(3)	All.
E	98.56(j)(4)	All.
E	98.56(j)(5)	All.
E	98.56(j)(6)	All.
E	98.56(l)	All.
F	98.66(a)	All.
F	98.66(c)(2)	All.
F	98.66(c)(3)	Only smelter-specific slope coefficients and overvoltage emission factors.
F	98.66(e)(1)	Only annual anode consumption (No CEMS).
F	98.66(f)(1)	Only annual paste consumption (No CEMS).
F	98.66(g)	All.
G	98.76(b)(2)	All.
G	98.76(b)(7)	All.
G	98.76(b)(8)	All.
G	98.76(b)(9)	All.
G	98.76(b)(10)	All.
G	98.76(b)(11)	All.
H	98.86(b)(2)	All.
H	98.86(b)(5)	All.

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
H	98.86(b)(6)	All.
H	98.86(b)(8)	All.
H	98.86(b)(10)	All.
H	98.86(b)(11)	All.
H	98.86(b)(12)	All.
H	98.86(b)(13)	All.
H	98.86(b)(15)	Only monthly kiln-specific clinker factors (if used) for each kiln.
I	98.96(f)(1)	All.
I	98.96(g)	Only annual consumption of the gas.
I	98.96(h)	All.
I	98.96(i)	All.
I	98.96(j)	All.
I	98.96(k)	All.
I	98.96(l)	All.
I	98.96(n)	All.
I	98.96(o)	Only inputs and calculations used to determine the inputs for Equation I–14.
I	98.96(q)(1)	Only inputs and results of calculations made accounting for the uptime of abatement systems used during the reporting year.
I	98.96(q)(3)	All.
I	98.96(q)(5)(iv)	Only inputs used to calculate the class average.
I	98.96(r)	All.
I	98.96(s)	Only estimates of inputs into the heat transfer fluid mass balance equation.
K	98.116(b)	Only annual production by product from each EAF (No CEMS).
K	98.116(e)(4)	All.
K	98.116(e)(5)	All.
L	98.126(b)(1)	Only data used in calculating the absolute errors and data used in calculating the relative errors.
L	98.126(b)(2)	All.
L	98.126(b)(8)(i)	Only mass of each fluorine-containing product that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(ii)	Only mass of each fluorine-containing by-product that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(iii)	Only mass of each fluorine-containing reactant that is removed from the process and fed into the destruction device.
L	98.126(b)(8)(iv)	Only mass of each fluorine-containing by-product that is removed from the process and recaptured.
L	98.126(b)(8)(v)	All.
L	98.126(b)(9)(i)	All.
L	98.126(b)(9)(ii)	All.
L	98.126(b)(9)(iii)	All.
L	98.126(b)(10)	All.
L	98.126(b)(11)	All.
L	98.126(b)(12)	All.
L	98.126(c)(1)	Only quantity of the process activity used to estimate emissions.
L	98.126(c)(2)	All.
L	98.126(f)(1)	All.
L	98.126(g)(1)	All.
L	98.126(h)(2)	All.
N	98.146(b)(2)	Only annual quantity of carbonate based-raw material charged to each continuous glass melting furnace.
N	98.146(b)(4)	All.
N	98.146(b)(6)	All.
O	98.156(a)(2)	All.
O	98.156(a)(7)	All.
O	98.156(a)(8)	All.
O	98.156(a)(9)	All.
O	98.156(a)(10)	All.
O	98.156(b)(1)	All.
O	98.156(b)(2)	All.
O	98.156(d)(1)	All.
O	98.156(d)(2)	All.
O	98.156(d)(3)	All.
O	98.156(d)(4)	All.
O	98.156(d)(5)	All.
O	98.156(e)(1)	All.
P	98.166(b)(2)	All.
P	98.166(b)(5)	All.
P	98.166(b)(6)	All.
Q	98.176(b)	Only annual quantity taconite pellets, coke, iron, and raw steel (No CEMS).

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
Q	98.176(e)(1)	All.
Q	98.176(e)(3)	All.
Q	98.176(e)(4)	All.
Q	98.176(f)(1)	All.
Q	98.176(f)(2)	All.
Q	98.176(f)(3)	All.
Q	98.176(f)(4)	All.
Q	98.176(g)	All.
R	98.186(b)(6)	All.
R	98.186(b)(7)	All.
S	98.196(b)(2)	All.
S	98.196(b)(3)	All.
S	98.196(b)(5)	All.
S	98.196(b)(6)	All.
S	98.196(b)(8)	All.
S	98.196(b)(10)	All.
S	98.196(b)(11)	All.
S	98.196(b)(12)	All.
U	98.216(b)	All.
U	98.216(e)(1)	All.
U	98.216(e)(2)	All.
V	98.226(c)	All.
V	98.226(d)	All.
V	98.226(i)	All.
V	98.226(j)	All.
V	98.226(m)(1)	All.
V	98.226(m)(3)	All.
V	98.226(m)(4)	All.
V	98.226(m)(5)	All.
V	98.226(m)(6)	All.
V	98.226(p)	All.
W	98.236(c)(1)(i)	All.
W	98.236(c)(1)(ii)	All.
W	98.236(c)(1)(iii)	All.
W	98.236(c)(2)(i)	All.
W	98.236(c)(3)(i)	All.
W	98.236(c)(3)(ii)	All.
W	98.236(c)(3)(iii)	All.
W	98.236(c)(4)(i)(A)	All.
W	98.236(c)(4)(i)(B)	All.
W	98.236(c)(4)(i)(C)	All.
W	98.236(c)(4)(i)(D)	All.
W	98.236(c)(4)(i)(E)	All.
W	98.236(c)(4)(i)(F)	All.
W	98.236(c)(4)(i)(G)	All.
W	98.236(c)(4)(i)(H)	All.
W	98.236(c)(4)(ii)(A)	All.
W	98.236(c)(5)(iii)	All.
W	98.236(c)(5)(iv)	All.
W	98.236(c)(5)(v)	All.
W	98.236(c)(6)(i)(B)	All.
W	98.236(c)(6)(i)(D)	All.
W	98.236(c)(6)(i)(E)	All.
W	98.236(c)(6)(i)(F)	All.
W	98.236(c)(6)(ii)(B)	All.
W	98.236(c)(6)(ii)(C)	All.
W	98.236(c)(7)(i)	All.
W	98.236(c)(8)(i)	All.
W	98.236(c)(8)(ii)(A)	All.
W	98.236(c)(8)(ii)(B)	All.
W	98.236(c)(8)(ii)(C)	All.
W	98.236(c)(8)(ii)(D)	All.
W	98.236(c)(8)(ii)(E)	All.
W	98.236(c)(8)(ii)(F)	All.
W	98.236(c)(8)(iii)(A)	All.
W	98.236(c)(8)(iii)(B)	All.
W	98.236(c)(8)(iii)(C)	All.
W	98.236(c)(8)(iii)(D)	All.
W	98.236(c)(8)(iii)(E)	All.
W	98.236(c)(10)(ii)	All.
W	98.236(c)(10)(iii)	All.
W	98.236(c)(11)(ii)	All.

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
W	98.236(c)(12)(ii)	All.
W	98.236(c)(12)(iii)	All.
W	98.236(c)(12)(v)	All.
W	98.236(c)(13)(i)(B)	All.
W	98.236(c)(13)(i)(E)	All.
W	98.236(c)(13)(i)(F)	All.
W	98.236(c)(13)(ii)(A)	All.
W	98.236(c)(13)(ii)(B)	All.
W	98.236(c)(13)(iii)(A)	All.
W	98.236(c)(13)(iii)(B)	All.
W	98.236(c)(13)(v)(A)	All.
W	98.236(c)(14)(i)(B)	All.
W	98.236(c)(14)(ii)(A)	All.
W	98.236(c)(14)(ii)(B)	All.
W	98.236(c)(14)(iii)(A)	All.
W	98.236(c)(14)(iii)(B)	All.
W	98.236(c)(14)(iv)(A)	All.
W	98.236(c)(14)(iv)(B)	All.
W	98.236(c)(15)(i)(A)	All.
W	98.236(c)(15)(i)(B)	All.
W	98.236(c)(15)(ii)	All.
W	98.236(c)(16)(i)	All.
W	98.236(c)(16)(ii)	All.
W	98.236(c)(16)(iii)	All.
W	98.236(c)(16)(iv)	All.
W	98.236(c)(16)(v)	All.
W	98.236(c)(16)(vi)	All.
W	98.236(c)(16)(vii)	All.
W	98.236(c)(16)(viii)	All.
W	98.236(c)(16)(ix)	All.
W	98.236(c)(16)(x)	All.
W	98.236(c)(16)(xi)	All.
W	98.236(c)(16)(xii)	All.
W	98.236(c)(16)(xiii)	All.
W	98.236(c)(16)(xiv)	All.
W	98.236(c)(17)(ii)	All.
W	98.236(c)(17)(iii)	All.
W	98.236(c)(17)(iv)	All.
W	98.236(c)(17)(v)	All.
W	98.236(c)(18)(i)	All.
W	98.236(c)(18)(ii)	All.
W	98.236(c)(19)(iv)	All.
W	98.236(c)(19)(vii)	All.
W	98.236(d)	All.
X	98.246(a)(4)	Only monthly volume values, monthly mass values, monthly carbon content values, molecular weights for gaseous feedstocks, molecular weights for gaseous products, and indication of whether the alternative method in § 98.243(c)(4) was used.
X	98.246(b)(5)(iii)	All.
X	98.246(b)(5)(iv)	All.
Y	98.256(e)(6)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)(ii)	All.
Y	98.256(e)(9)	Only annual volume of flare gas combusted, annual average higher heating value of the flare gas, volume of gas flared, average molecular weight, carbon content of the flare, and molar volume conversion factor if using Eq. Y–3.
Y	98.256(e)(10)	Only fraction of carbon in the flare gas contributed by methane.
Y	98.256(f)(7)	Only molar volume conversion factor.
Y	98.256(f)(10)	Only coke burn-off factor, annual throughput of unit, and average carbon content of coke.
Y	98.256(f)(11)	Only units of measure for the unit-specific CH_4 emission factor, activity data for calculating emissions, and unit-specific emission factor for CH_4.
Y	98.256(f)(12)	Only unit-specific emission factor for N_2O, units of measure for the unit-specific N_2O emission factor, and activity data for calculating emissions.
Y	98.256(f)(13)	Only average coke burn-off quantity per cycle or measurement period, and average carbon content of coke.
Y	98.256(h)(4)	All.
Y	98.256(h)(5)	Only value of the correction, annual volume of recycled tail gas, and annual average mole fraction of carbon in the tail gas (if used to calculate recycling correction factor).

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
Y	98.256(i)(5)	Only annual mass of green coke fed, carbon content of green coke fed, annual mass of marketable coke produced, carbon content of marketable coke produced, and annual mass of coke dust removed from the process.
Y	98.256(i)(7)	Only the unit-specific CH_4 emission factor, units of measure for unit-specific CH_4 emission factor, and activity data for calculating emissions.
Y	98.256(i)(8)	Only units of measure for the unit-specific factor, activity data used for calculating emissions, and site-specific emissions factor.
Y	98.256(j)(2)	All.
Y	98.256(j)(5)	Only CO_2 emission factor.
Y	98.256(j)(6)	Only CH_4 emission factor.
Y	98.256(j)(7)	Only carbon emission factor.
Y	98.256(j)(8)	Only CO_2 emission factor and carbon emission factor.
Y	98.256(j)(9)	Only CH_4 emission factor.
Y	98.256(k)(3)	Only dimensions of coke drum or vessel, typical gauge pressure of the coking drum, typical void fraction of coke drum or vessel, annual number of coke-cutting cycles of coke drum or vessel, and molar volume conversion factor for each coke drum or vessel.
Y	98.256(k)(4)	Only height and diameter of the coke drums, cumulative number of vessel openings for all delayed coking drums, typical venting pressure, void fraction, mole fraction of methane in coking gas.
Y	98.256(l)(5)	Only molar volume conversion factor.
Y	98.256(m)(3)	Only total quantity of crude oil plus the quantity of intermediate products received from off-site, CH_4 emission factor used, and molar volume conversion factor.
Y	98.256(n)(3)	All (if used in Equation Y–21 to calculate emissions from equipment leaks).
Y	98.256(o)(2)(ii)	All.
Y	98.256(o)(4)(ii)	All.
Y	98.256(o)(4)(iii)	All.
Y	98.256(o)(4)(iv)	All.
Y	98.256(o)(4)(v)	All.
Y	98.256(o)(4)(vi)	Only tank-specific methane composition data and gas generation rate data.
Y	98.256(p)(2)	Only quantity of materials loaded that have an equilibrium vapor-phase concentration of CH_4 of 0.5 volume percent or greater.
Z	98.266(f)(5)	All.
Z	98.266(f)(6)	All.
AA	98.276(b)	All.
AA	98.276(c)	Only annual mass of the spent liquor solids combusted.
AA	98.276(d)	All.
AA	98.276(e)	All.
AA	98.276(f)	All.
AA	98.276(g)	All.
AA	98.276(h)	All.
AA	98.276(i)	All.
BB	98.286(b)(1)	All.
BB	98.286(b)(4)	All.
BB	98.286(b)(6)	All.
CC	98.296(b)(5)	Only monthly consumption of trona or liquid alkaline feedstock (for facilities using Equation CC–1).
CC	98.296(b)(6)	Only monthly production of soda ash for each manufacturing line (for facilities using Equation CC–2).
CC	98.296(b)(7)	All.
CC	98.296(b)(10)(i)	All.
CC	98.296(b)(10)(ii)	All.
CC	98.296(b)(10)(iii)	All.
CC	98.296(b)(10)(iv)	All.
CC	98.296(b)(10)(v)	All.
CC	98.296(b)(10)(vi)	All.
CC	98.296(b)(10)(vii)	All.
DD	98.306(a)(2)	All.
DD	98.306(a)(3)	All.
DD	98.306(d)	All.
DD	98.306(e)	All.
DD	98.306(f)	All.
DD	98.306(g)	All.
DD	98.306(h)	All.
DD	98.306(i)	All.

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
DD	98.306(j)	All.
DD	98.306(k)	All.
DD	98.306(l)	All.
EE	98.316(b)(6)	All.
EE	98.316(b)(9)	All.
FF	98.326(a)	All.
FF	98.326(b)	All.
FF	98.326(c)	All.
FF	98.326(f)	Only quarterly volumetric flow rate.
FF	98.326(g)	Only quarterly CH_4 concentration.
FF	98.326(h)	Only weekly volumetric flow used to calculate CH_4 liberated from degasification systems.
FF	98.326(j)	All.
FF	98.326(k)	All.
FF	98.326(l)	All.
FF	98.326(o)	All.
FF	98.326(p)	Only assumed destruction efficiency for the primary destruction device and assumed destruction efficiency for the backup destruction device.
GG	98.336(b)(6)	All.
GG	98.336(b)(7)	All.
GG	98.336(b)(10)	All.
HH	98.346(a)	Only year in which landfill first accepted waste, last year the landfill accepted waste, capacity of the landfill, and waste disposal quantity for each year of landfilling.
HH	98.346(b)	Only quantity of waste determined using the methods in § 98.343(a)(3)(i), quantity of waste determined using the methods in § 98.343(a)(3)(ii), population served by the landfill for each year, and the value of landfill capacity (LFC) used in the calculation.
HH	98.346(c)	All.
HH	98.346(d)(1)	Only degradable organic carbon (DOC) value, methane correction factor (MCF) values, and fraction of DOC dissimilated (DOCF) values.
HH	98.346(d)(2)	All.
HH	98.346(e)	Only fraction of CH_4 in landfill gas.
HH	98.346(f)	Only surface area associated with each cover type.
HH	98.346(g)	All.
HH	98.346(i)(5)	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency for the primary destruction device, and destruction efficiency for the backup destruction device.
HH	98.346(i)(6)	All.
HH	98.346(i)(7)	Only surface area specified in Table HH–3, estimated gas collection system efficiency, and annual operating hours of the gas collection system.
HH	98.346(i)(9)	Only CH_4 generation value.
II	98.356(b)(1)	All.
II	98.356(b)(2)	All.
II	98.356(b)(3)	All.
II	98.356(b)(4)	All.
II	98.356(b)(5)	All.
II	98.356(d)(1)	All.
II	98.356(d)(2)	All (if conducting weekly sampling).
II	98.356(d)(3)	All (if conducting weekly sampling).
II	98.356(d)(4)	Only weekly average temperature (if conducting weekly sampling).
II	98.356(d)(5)	Only weekly average moisture content (if conducting weekly sampling).
II	98.356(d)(6)	Only weekly average pressure (if conducting weekly sampling).
II	98.356(d)(7)	All.
II	98.356(d)(8)	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency of the primary destruction device, and destruction efficiency of the backup destruction device.
SS	98.456(a)	All.
SS	98.456(b)	All.
SS	98.456(c)	All.
SS	98.456(d)	All.
SS	98.456(e)	All.
SS	98.456(f)	All.
SS	98.456(g)	All.

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is changed ("All" means that the date is changed for all data elements in the cited paragraph)
SS	98.456(h)	All.
SS	98.456(i)	All.
SS	98.456(j)	All.
SS	98.456(m)	All.
SS	98.456(n)	All.
SS	98.456(o)	All.
SS	98.456(q)	All.
SS	98.456(r)	All.
SS	98.456(s)	All.
SS	98.456(t)	Only for any missing data the substitute parameters used to estimate emissions in their absence.
TT	98.466(a)(2)	All.
TT	98.466(c)(1)	All.
TT	98.466(c)(3)(i)	All.
TT	98.466(c)(3)(ii)	Only waste disposal quantity and production quantity.
TT	98.466(c)(3)(iii)	All.
TT	98.466(c)(4)(i)	All.
TT	98.466(c)(4)(ii)	All.
TT	98.466(c)(4)(iii)	All.
TT	98.466(d)(1)	All.
TT	98.466(d)(2)	Only degradable organic carbon (DOC_X) value used in calculations.
TT	98.466(d)(3)	Only fraction of CH_4 in landfill gas.
TT	98.466(f)	All.

[FR Doc. 2010–32447 Filed 12–23–10; 8:45 am]

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Federal Register

Monday,
December 27, 2010

Part IV

Environmental Protection Agency

40 CFR Part 98

Call for Information: Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2010–0964; FRL–9242–8]

Call for Information: Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for Information.

SUMMARY: EPA is publishing this call for information and public comment to solicit certain additional information pertaining to reporting of inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule. In response to EPA's July 7, 2010 proposed confidentiality determinations for data required under the reporting rule, EPA received several comments that warrant in-depth evaluation of potential harm to businesses from possible public availability of some of this data. The information and comment solicited by this notice will assist EPA as we consider a long-term approach that will balance data quality and transparency with the reporting businesses' need to protect sensitive business information.

DATES: Information and comments must be received on or before February 25, 2011.

ADDRESSES: Submit your information and comments, identified by Docket ID No. EPA–HQ–OAR–2010–0964 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHGReportingCBI@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2010–0964 (and/or RIN number) in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. OAR–2010–0964, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your information and comments to Docket ID No. EPA–HQ–OAR–2010–0964. EPA's policy is that all information and comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2010–0964. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingCBI@epa.gov.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic pre-publication copy of this call for information will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
NGO nongovernmental organization
U.S. United States

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. What is this action?
III. What specific information is EPA seeking?
A. Specific information identifying how public availability of any inputs to emission equations data elements would cause harm to any reporter
IV. What should I consider as I prepare my information and comments to EPA?
A. Submitting CBI
B. Tips for Preparing Your Information and Comments

I. Background

On October 30, 2009, EPA published the Mandatory Greenhouse Gas (GHG) Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the GHG Reporting Rule (hereinafter referred to as "Part 98") and its subsequent amendments, EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported consists of GHG emissions information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section

114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI" (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the "July 7, 2010 CBI proposal"). The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts included in the 2009 final Part 98 rule (*see* 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (*see* 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (*see* 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (*see* 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the "August 11, 2010 revisions proposal"). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions notice (75 FR 43889, July 27, 2010; hereinafter referred to as the "July 27, 2010 supplemental CBI proposal.)"

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today's action. Consistent with EPA's long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. Though we are still in the process of considering these comments, we plan to complete our consideration of these comments and issue final confidentiality determinations for the Part 98 data elements that are not inputs to emission equations, which constitute approximately 75 percent of the data elements, in a separate final action.

However, EPA received comments that raise concerns regarding the public availability of data in the inputs to emission equations category. Almost all commenters from industry wrote that some or all inputs to emission equations (which include product compositions, raw materials used, fuel types and quantities, production volumes, and other process-specific information) are considered trade secrets or otherwise sensitive business information, and that making that information publicly available would cause them serious competitive harm. Some commenters expressed concern that public disclosure of production volumes and process-specific information could give competitors insight into sensitive operational limits and process capabilities. The commenters explained that, combined with other publicly available information, this information could give competitors details concerning business positions or vulnerabilities that could be used to a reporter's disadvantage. Some commenters stated that disclosure of the type, composition, and relative proportions of raw materials used would reveal the specific formula used to manufacture their products. Others expressed concern that product composition data reveal information about their products' performance characteristics. Some stated that public availability of information about the types and quantities of fuels consumed would reveal sensitive details about individual production processes' energy usage and could be used to estimate relative production costs.

Several Part 98 reporters commented that, had they known that EPA would later propose that inputs to emission equations qualify as emission data that must be made available to the public under CAA section 114(c), they would have commented more critically and more extensively on Part 98 equations when they were proposed in 2009 and might have suggested or agreed to alternatives such as third-party audits or installation of continuous emission monitoring systems (CEMS). Several reporters wrote that they would have installed CEMS or otherwise changed their compliance approaches. Commenters further noted that, for some subparts, Part 98 allows monitoring emissions with CEMS as an alternative to calculation with emission equations but that, by the time EPA proposed CBI determinations in July 2010, reporters no longer could install CEMS for 2010. As a result, commenters stated, these reporters were locked into using the emission equations for 2010 reporting if that was the methodology they chose. They argued that public availability of potentially sensitive inputs for calculation of 2010 emissions should not be based on a reporter's decision not to install CEMS for 2010 when this decision was made prior to and without knowledge of the July 7, 2010 CBI proposal.

EPA has reviewed these comments and has concluded that some of the concerns warrant more extensive evaluation of potential harm from the public availability of inputs to equations. To assist EPA in this evaluation, EPA is issuing this notice to call for certain additional information that the Agency has determined is necessary or helpful in order to evaluate and take action on the concerns described above.

To allow EPA time to complete our evaluation and take appropriate actions before collecting inputs to equations, EPA is proposing in a separate notice to defer to March 31, 2014 the deadline for reporting inputs to equations. EPA is also concurrently promulgating an interim final rule that defers the reporting deadline for inputs to equations to August 31, 2011. This short-term deferral allows EPA time to complete the notice and comment rulemaking for the longer deferral while avoiding possible public availability of inputs to equations before EPA can evaluate and take appropriate actions regarding inputs to equations.

II. What is this action?

EPA is soliciting information and viewpoints from interested parties on how, specifically, public availability of inputs to emission equations in Part 98 could cause competitive harm. We are also interested in information on additional approaches to calculating GHG emissions that do not use data elements that may be considered sensitive and on additional approaches to verifying reported GHG emission data if any inputs to emission equations are not reported to EPA. In addition, we are soliciting information on whether any of the inputs to emission equations data elements are already published or publicly available elsewhere,

discernable from publicly available information or otherwise not sensitive. The specific information requested is listed in Section III of this call for information.

This call for information is a critical part of EPA's consideration of treatment of inputs. If reporters have serious concerns about inputs to equations information becoming publicly available, it is crucial that they respond in a detailed fashion to this call for information. The specific information received will help EPA to develop a sound, long-term approach that balances data quality and transparency with the need to protect sensitive business information. When EPA receives the additional requested information, we will be able to fully evaluate which inputs to equations, if any, could result in serious business harms if made available to the public. For such cases, if any, EPA would evaluate whether emissions can be calculated or verified using additional methodologies, consistent with the transparency and accuracy goals of Part 98. Should EPA identify any such additional methodologies, EPA may propose to amend Part 98 to allow these additional emission measurement or calculation approaches. If additional approaches to calculate or verify emissions are viable, EPA may decide that it is not necessary to collect certain highly sensitive inputs and propose to amend Part 98 accordingly.

As stated in the July 7, 2010 CBI proposal preamble, EPA is committed to transparency in the GHG Reporting Program. We consider transparency important because it promotes public confidence in the data and enables the public, industry, NGOs, and other stakeholders to better understand the sources of GHG emissions and the factors that affect the quantities of GHGs emitted. Any approach we adopt will be based on a well-balanced consideration of both the importance of protecting certain highly sensitive data elements and our commitment to the GHG Reporting Program's transparency and accuracy. Should EPA decide that it is necessary to amend Part 98 as a result of this evaluation, we would promulgate any such amendment through a notice and comment process.

III. What specific information is EPA seeking?

Although a few commenters on the July 7, 2010 CBI proposal identified specific data elements and provided supporting rationale regarding how the public availability of individual data elements would cause harm to their competitive positions, many provided only general statements that inputs to emission equations can be sensitive and should be held confidential. Other commenters noted that inputs to emission equations that reporters allege to be sensitive may already be publicly available, but did not identify specific data elements and where they are published. To enable us to better understand and evaluate stakeholder concerns and assertions, EPA requests from interested parties information and views on the following topics and questions:

- *Specific information identifying how public availability of any inputs to emission equations data elements would cause harm to any reporter.*

—The identity of specific data elements used as inputs to emission equations that you consider sensitive business information that would cause competitive harm if disclosed. To better assist us in identifying the data element, include the rule citation for each data element you identify.

—For each data element identified in the above bullet, you should provide a specific explanation of how disclosure of the data would cause competitive harm. Describe the measures currently taken to keep the data confidential. If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Discuss how this data element may differ from similar data that is already publicly available. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of this data, and explain how the combination of data could be used to cause competitive harm. Please be as specific as possible in your responses and include all information necessary to evaluate your assertions.

- *Which, if any, data that are inputs to emission equations are already publicly available, discernable from other publicly available data, or otherwise not sensitive for any reporter.*

—In your response, please identify the manner and location in which each specific data element you identify is available or not sensitive, including a citation. If the data are physically published, such as in a book, industry trade publication, or Federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and identify the Web site publisher and content author.

- *Additional calculation or measurement approaches for a particular subpart that would comparably measure or calculate GHG emissions but would not use data elements that you consider to be sensitive as inputs to emission equations.*

—Please provide full equations and describe your suggested calculation and/or measurement approach in detail. Describe the parameters used as inputs and explain how each input parameter could be measured. Indicate whether the measurement devices needed already exist or whether new measuring equipment would have to be installed and the time required for such installation. Compare the accuracy and cost of your proposed approach with those of the existing Part 98 approaches and describe any unique or unusual facility-specific situations in which your recommended approach would not provide accurate estimates of GHG emissions.

- *Verification approaches that could be used to verify emission figures and that would not require reporting to EPA the specific data elements you consider sensitive.*

—Under the existing Part 98 rule, EPA will use the inputs to emissions equations to verify reported GHG emissions. EPA solicits suggestions for additional approaches for verifying the GHG emissions for facilities that use the existing Part 98 emission equations. In addition, we seek suggestions for verifying, without reporting to EPA, sensitive inputs to emissions equations. Identify any additional parameters that could be used for verification and the particular subpart that would be affected and explain how they would be used. Describe any particular situations in which your suggested approach should or should not be used.

EPA strongly urges any parties concerned about the public availability of inputs to equations to submit in detail the information requested above. If EPA is to seriously consider potentially revising the requirements of Part 98, the agency must have robust data on which to base those revisions. Conclusory or unsubstantiated statements will not suffice.

Please note that we are not requesting additional comment on EPA's proposed determination in the CBI proposals described above that inputs to emission equations constitute emission data. EPA received comment on that proposed determination during the public comment period for the CBI proposals and will respond to those comments in a future action.

IV. What should I consider as I prepare my information and comments to EPA?

A. Submitting CBI

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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

B. Tips for Preparing Your Information and Comments

When submitting information and comments, remember to:

Identify the rulemaking by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail address: *GHGReportingRule@epa.gov.*

Dated: December 17, 2010.

Lisa P. Jackson,

Administrator.

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